

Court No. - 86

Case :- APPLICATION U/S 482 No. - 4405 of 2022

Applicant :- Rajesh Patel @ Babloo

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Shailesh Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the record.

2. This application under Section 482 Cr.P.C. has been filed by the applicant with the prayer to quash charge-sheet no.128 of 2016 dated 17.11.2016 and cognizance/summoning order dated 26.11.2018 as well as entire proceedings of Case No. 9172 of 2018 (State Vs. Rajesh Patel @ Babloo), arising out of Case Crime No. 461 of 2016, under Sections 4/21 Mines and Minerals (Regulation and Development) Act, 1957 and Section 3/4 of Prevention of Damage to Public Property Act, 1984, Police Station Ahraura, District Mirzapur, pending in the court of C.J.M. Mirzapur.

3. Brief facts giving rise to this application is that on 06.09.2016 at about 2.50 PM, an Inspection Team during surprise inspection found four persons illegally mining stone at village Bhagauti Dei and after seeing the Inspection team, they escaped from the place of incident. On making enquiry, it was found that the applicant was illegally mining stone from the place of incident. In this regard, a first information report was lodged against the applicant, which was registered vide Case Crime No. 461 of 2016, under Sections 4/21 Mines and Minerals (Regulation and Development) Act, 1957 and Section 3/4 of Prevention of Damage to Public Property Act, 1984, Police Station Ahraura, District Mirzapur.

4. After registration of the FIR, the Police thoroughly investigated the matter and after recording statement of the witnesses u/s 161 Cr.P.C. submitted charge-sheet against the applicant. On the basis of which, the learned Magistrate has taken cognizance under Sections 4/21 Mines and

Minerals (Regulation and Development) Act, 1957 and Section 3/4 of Prevention of Damage to Public Property Act, 1984 vide order dated 26.11.2018.

5. Being aggrieved and dissatisfied by the said order dated 26.11.2018, the present application u/s 482 Cr.P.C. has been filed.

6. Learned counsel for the applicant has submitted that the impugned order dated 26.11.2018 taking cognizance of the offence and summoning the applicant to face trial on the basis of charge-sheet is wholly illegal, without jurisdiction and liable to be set aside.

7. Learned counsel for the applicant has next submitted that for an offence under Section 4 read with Section 21 of Mines and Minerals (Development and Regulation) Act, 1957, no cognizance can be taken on the basis of police report. To substantiate his argument, he has drawn the attention of the Court to the provisions contained in Section 22 of the aforesaid Act, wherein it is stated that "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."

8. Perusal of the said provision clearly lays down that for an offence under Section 4 read with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, cognizance cannot be taken on the basis of police report rather a complaint is to be filed in writing made by a person authorised in this behalf by the Central Government or the State Government.

9. Learned counsel for the applicant has next submitted that Section 22 of the Mines and Minerals (Development and Regulations) Act, 1957 clearly provides that for an offence under Section 4/21 of the Mines and Minerals (Development and Regulations) Act, 1957 cognizance of the offences cannot be taken on the basis of the police report rather a complaint is to be filed in writing made by a person authorised in this behalf by the Central Government or the State Government.

10. Learned counsel for the applicant has thus submitted that the order taking cognizance of the offences dated

26.11.2018 based on the charge-sheet is bad in law and therefore, liable to be set aside.

11. Per contra, learned AGA could not dispute the aforesaid facts, but has stated that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, prima facie offence under Section 3/4 of Prevention of Damage to Public Property Act, 1984 is clearly made out against the applicant and as such, proceedings under Sections 3/4 of Prevention of Damage to Public Property Act, 1984 cannot be quashed.

12. Having considered the rival submission made by the parties and taking into consideration the provision contained in Section 22 of the Mines and Minerals (Development and Regulations) Act, 1957, which provides that "No Court shall taken 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 State Government" order dated 26.11.2018 taking cognizance of the offence based on the charge-sheet dated 17.11.2016 and summoning the applicant under Section 4/21 of the Mines and Minerals (Development and Regulation) Act, 1957 is liable to be set aside, however it is further open for the competent authority authorised in this behalf by the Central Government or the State Government to file a complaint in writing by an authorised person under the Mines and Minerals (Development and Regulations) Act, 1957, the learned Magistrate may proceed in accordance with law under Section 4/21 of the Mines and Minerals (Development and Regulations) Act, 1957.

13. So far as the prosecution of the applicant under Sections 3/4 of Prevention of Damage to Public Property Act, 1984 is concerned, prima facie offence under Section 3/4 of Prevention of Damage to Public Property Act, 1984, is clearly made out against the applicant, as such, proceedings under Section 3/4 of Prevention of Damage to Public Property Act, 1984 cannot be quashed.

14. In view of the foregoing discussion, proceedings of Case No. 9172 of 2018 (State Vs. Rajesh Patel @ Babloo), arising out of Case Crime No. 461 of 2016, under Sections 4/21 Mines and Minerals (Regulation and Development) Act, 1957, based on the charge-sheet stands **quashed**, however

the proceedings against the applicant under Sections 3/4 of Prevention of Damage to Public Property Act, 1984 are just, proper and legal and do not call for any interference and the said proceedings would continue against the applicant under Sections 3/4 of Prevention of Damage to Public Property Act, 1984 in accordance with law.

15. With the aforesaid observation, the present application u/s 482 Cr.P.C. is partly **allowed** subject to the fact that, in case, any complaint is filed by the authorised person under Section 4/21 of Mines and Minerals (Development and Regulations) Act, 1957, the learned Magistrate may proceed in accordance with law in the said Sections. Further the proceedings of the instant case under Sections 3/4 of Prevention of Damage to Public Property Act, 1984 shall continue against the applicant and brought to logical conclusion in accordance with law.

Order Date :- 23.11.2023
Subham