

Court No. - 86

Case :- APPLICATION U/S 482 No. - 34803 of 2023

Applicant :- Rakesh Gupta

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

Counsel for Applicant :- Shri Prakash Dwivedi

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 with the prayer to quash charge-sheet dated 30.12.2018 and cognizance order dated 14.02.2019 as well as entire proceedings of Case No. 188 of 2019 (State Vs. Munna Yadav and others) arising out of Case Crime No. 576 of 2018, under Sections 419, 420 IPC, Sections 3/57/7 of U.P. Minor Minerals (Concession) Rules, 1963 and Sections 4/21 of Mines and Minerals (Development and Regulations) Act, 1957, Police Station Robertsganj, District Sonbhadra, pending in the court of Chief Judicial Magistrate, Sonbhadra.

3. Brief facts giving rise to this application is that alleged truck had loaded 9 cubic meter gitti, for which, an eTP invoice has been issued on 07.10.2018. The opposite party no.2 had lodged an FIR against the applicant and four others on 07.10.2018, which was registered vide Case Crime No. 0567 of 2018, under Sections 419, 420 IPC, Sections 3/57/7 of U.P. Minor Minerals (Concession) Rules, 1963 and Sections 4/21 of Mines and Minerals (Development and Regulations) Act, 1957, Police Station Robertsganj, District Sonbhadra.

4. After registration of the FIR, the Police thoroughly investigated the matter and after recording statement of the witnesses under Section 161 Cr.P.C. submitted charge-sheet against the applicant. On the basis of which, learned Magistrate has taken cognizance under Section 4 read with Section 21 of the Mines and Minerals (Development and Regulations) Act, 1957, under Sections 419, 420 IPC, Sections 3/57/7 of U.P. Minor Minerals (Concession) Rules,

1963 vide order dated 14.02.2019.

5. Being aggrieved and dissatisfied by the said order dated 14.02.2019, the present application under Section 482 Cr.P.C. has been filed.

6. Learned counsel for the applicant has submitted that the impugned order dated 14.02.2019 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 drawn the attention of the Court to Rule 74 of the U.P. Minor Minerals (Concession) Rules, 1963, which provides:-

"74. Cognizance of offences. - (1) No court shall take cognizance of any offence punishable under these rules except on a complaint in writing of the fact constituting such offence by the District Officer or by any officer authorized by him in this behalf."

8. Learned counsel for the applicant has further submitted that for an offence under Section 4 read with Section 21 of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the 'Act'), 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 Rule made thereunder except upon complaint in writing made by a person authorized in this behalf by the Central Government or the State Government."*

9. Perusal of the said provision clearly lays down that for an offence under Section 4 read with Section 21 of the Act, cognizance cannot be taken on the basis of police report rather a complaint is to be filed in writing made by a person authorized in this behalf by the Central Government or the State Government.

10. Learned counsel for the applicant has next submitted that Section 22 of the Mines and Minerals (Development and Regulations) Act, 1957 as well as Rule 74 of the U.P. Minor Minerals (Concession) Rules, 1963 clearly provides that for

an offence under 3/57/7 of the U.P. Minor Minerals (Concession) Rules and 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 authorized in this behalf by the Central Government or the State Government [in case of Mines and Minerals (Development and Regulations) Act, 1957] or by the District Officer or any officer authorized by him in this behalf [in case of U.P. Minor Minerals (Concession) Rules, 1963].

11. Learned counsel for the applicant has thus submitted that the order taking cognizance of the offences dated 14.02.2019 based on the charge-sheet is bad in law and therefore, is liable to be set aside.

12. 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 Sections 419, 420 IPC is clearly made out against the applicants and as such, proceedings under Sections 419, 420 IPC cannot be quashed.

13. 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 authorized in this behalf by the Central Government or State Government" and in view of the provision contained in Section 74 of the U.P. Minor Minerals (Concession) Rules, 1963, which provides "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 authorized in this behalf by the Central Government or the State Government", order dated 14.02.2019 taking cognizance of the offence based on the charge-sheet dated 30.12.2018 and summoning the applicants under Section 4/21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Section 3/57/7 of the U.P. Minor Minerals (Concession) Rules, 1963 is liable to be set aside, however it is further open for the competent authority authorized in this behalf by

the Central Government or the State Government to file a complaint in writing by an authorized person under the Mines and Minerals (Development and Regulations) Act, 1957 and further, if a complaint in writing of the facts constituting such offence by the District Officer or by any authorized officer in this behalf is filed under the U.P. Minor Minerals (Concession) Rules, 1963, the learned Magistrate may proceed in accordance with law under Section 4/21 of the Mines and Minerals (Development and Regulations) Act, 1957 and Sections 3/57/7 of the U.P. Minor Minerals (Concession) Rules, 1963. So far as the prosecution of the applicant under Sections 419, 420 IPC is concerned, prima facie offence under Sections 419, 420 IPC is clearly made out against the applicant, as such, proceedings under Sections 419, 420 IPC cannot be quashed.

14. In view of the foregoing discussions, proceedings of Case No. 188 of 2019 (State Vs. Munna Yadav and others) arising out of Case Crime No. 576 of 2018, under Sections 419, 420 IPC, Sections 3/57/7 of U.P. Minor Minerals (Concession) Rules, 1963 and Sections 4/21 of Mines and Minerals (Development and Regulations) Act, 1957, Police Station Robertsganj, District Sonbhadra, pending in the court of Chief Judicial Magistrate, Sonbhadra, based on the charge-sheet stands **quashed**, however the proceedings against the applicant under Sections 419, 420 IPC are just, proper and legal and do not call for any interference and the said proceedings would continue against the applicants under Sections 419, 420 IPC in accordance with law.

15. With the aforesaid observations, the present application under Section 482 Cr.P.C. is **partly allowed** subject to the fact that, in case, any complaint is filed by the authorized person under Section 3/57/7 of U.P. Minor Minerals (Concession) Rules, 1963 as well as 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 419, 420 IPC shall continue against the applicant and brought to logical conclusion in accordance with law.

Order Date :- 16.10.2023
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