

**Court No. - 86**

**Case :- APPLICATION U/S 482 No. - 38811 of 2023**

**Applicant :- Prabhakar Tiwari**

**Opposite Party :- State Of U.P. And Another**

**Counsel for Applicant :- Ram Raksha Tiwari, Vinay Kumar Shukla**

**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 dated 19.6.2019 and summoning order dated 15.10.2020 as well as entire proceedings of Case No. 1103 of 2020 (State Vs. Prabhakar Tiwari), arising out of Case Crime No. 126 of 2019, under Sections 4 & 21 of Mines and Minerals (Development and Regulation) Act, 1957, Rule 3/57/70 of U.P. Minor Minerals (Concession) Rules, 2021 and Section 379, 411 IPC, Police Station Bara, District Allahabad, pending in the court of A.C.J.M., Court 17, Allahabad.

3. Brief facts giving rise to this application is that on 1.6.2019 at about 4.15 a.m., during inspection, the applicant's tractor trolley was intercepted, loaded with sand/morang for which relevant documents for transportation could not be provided. In this regard, a first information report was lodged against the applicant, which was registered vide Case Crime No. 126 of 2019, under Sections 4 & 21 of Mines and Minerals (Development and Regulation) Act, 1957, Rule 3/57/70 of U.P. Minor Mineral (Concession) Rules, 1963 and Section 379, 411 IPC, Police Station Bara, District Allahabad.

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 of Mines and Minerals (Development and Regulation) Act, 1957, Rule 3/57/70 of U.P. Minor Mineral (Concession) Rules, 1963 and

Section 379, 411 IPC vide order dated 15.10.2020.

5. Being aggrieved and dissatisfied by the said order dated 15.10.2020, 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 15.10.2020 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 authorised by him in this behalf.

8. 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 (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 Rules made thereunder except upon complaint in writing made by a person authorised 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 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.

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 Section 4/21 of the Mines and Minerals

(Development and Regulations) Act, 1957 and Rule 3/57/70 of the U.P. Minor Minerals (Concession) Rules, 1963, 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 (in case of Mines and Minerals (Development and Regulations) Act, 1957) or by the District Officer or any officer authorised by him in this behalf (in case of the 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 15.10.2020 based on the charge-sheet is bad in law and therefore, 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 379, 411 IPC is clearly made out against the applicant and as such, proceedings under Sections 379, 411 IPC cannot be quashed.

13. Having considered the rival submission made by the parties and taking into consideration the provisions 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", and in view of the provision contained in Rule 74 of the U.P. Minor Minerals (Concession) Rules, 1963 which provides "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 authorised by him in this behalf", order dated 15.10.2020 taking cognizance of the offence based on the charge-sheet dated 19.6.2019 and summoning the applicant under Section 4/21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule 3/57/70 of the U.P. Minor Minerals (Concession) Rule, 1963 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 and further, if a complaint in writing of the facts constituting such offence by the District Officer or by any authorised 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 Rule 3/57/70 U.P. Minor Minerals (Concession) Rules, 1963. So far as the prosecution of the applicant under Section 379, 411 IPC is concerned, prima facie offence under Section 379, 411 IPC is clearly made out against the applicant, as such, proceedings under Section 379, 411 IPC cannot be quashed.

14. In view of the foregoing discussion, proceedings of Case No. 1103 of 2020 (State Vs. Prabhakar Tiwari), arising out of Case Crime No. 126 of 2019, under Sections 4/21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule 3/57/70 of Minor Minerals (Concession) Rules, 2021, Police Station Bara, District Allahabad, pending in the court of Additional Chief Judicial Magistrate, Court No. 17, Allahabad, based on the charge-sheet stands quashed, however, the proceedings against the applicant u/s 379, 411 IPC are just, proper and legal and do not call for any interference and the said proceedings would continue against the applicant under Section 379, 411 IPC 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 as well as Rule 3/57/70 of the U.P. Minor Minerals (Concession) Rules, 1963, the learned Magistrate may proceed in accordance with law in the said Sections. Further, the proceedings of the instant case u/s 379, 411 IPC shall continue against the applicant and brought to logical conclusion in accordance with law.

**Order Date :- 30.10.2023**

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