

Court No. - 86

Case :- APPLICATION U/S 482 No. - 40218 of 2023

Applicant :- Ashok Kumar And 2 Others

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

Counsel for Applicant :- Radhey Shyam Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicants, 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 cognizance order dated 3.12.2019 passed by C.J.M. Farrukhabad as well as entire proceedings of Case No. 4931 of 2019 (State Vs. Ashok Kumar and others), arising out of Case Crime No. 108 of 2019, under Section 4/21 of Mines and Minerals (Development and Regulation) Act, 1957, Police Station Jahanganj, District Farrukhabad, pending in the court of Chief Judicial Magistrate, Farrukhabad.
3. Brief facts giving rise to this application are that on 27.7.2019, opposite party no.2 had lodged an FIR against the applicants with the allegations that they were doing illegal mining of soil. On the basis of the said allegations, an FIR was lodged vide Case Crime No. 108 of 2019, under section 4/21 of Mines and Minerals (Development and Regulation) Act, 1957.
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 the charge-sheet vide charge-sheet no. 01 of 2019, dated 23.8.2019. On the basis of which, the learned Magistrate has taken cognizance against the applicants under section 4/21 of Mines and Minerals (Development and Regulation) Act, 1957, Police Station Jahanganj, District Farrukhabad, vide order dated 3.12.2019.

5. Being aggrieved and dissatisfied by the said order dated 3.12.2019, the present application u/s 482 Cr.P.C. has been filed by the applicants before this Court.

6. Learned counsel for the applicants has submitted that from the allegations made in the FIR and the statements of witnesses recorded under Section 161 Cr.P.C., no offence under section 4/21 of Mines and Minerals (Development and Regulation) Act, 1957, Police Station Jahanganj, District Farrukhabad, is made out against the applicants and the present criminal case has been instituted with a malafide purpose just for harassment, as such, entire criminal proceedings is liable to be quashed.

7. Learned counsel for the applicants has further 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.

8. To substantiate his arguments, learned counsel for the applicants has drawn the attention of the Court to the provisions contained in Section 22 of Mines and Minerals (Development and Regulations) Act, 1957, 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 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 Mines and Minerals (Development and Regulations) 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 authorized in this behalf by the Central Government or the State Government.

10. Learned counsel for the applicants has thus submitted that the order taking cognizance based on Section 4 read with Section 21 of Mines and Minerals (Development and Regulations) Act,

1957, is bad in the eye of law and therefore, the same is liable to be set aside.

11. Per contra, learned AGA has could not dispute the aforesaid facts.

12. Having considered the rival submission made by learned counsel for 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 authorized in this behalf by the Central Government or State Government", the submission made by learned counsel for the applicants is sustainable and as such, the order taking cognizance dated 3.12.2019 on the charge-sheet and summoning the applicants to face trial under Section 4 read with Section 21 of the Mines and Minerals (Development and Regulations) Act, 1957 is liable to be set aside.

13. In view of the foregoing discussion, the present application under Section 482 Cr.P.C. is allowed and further proceedings under Section 4/21 of the Mines and Minerals (Development and Regulations) Act, 1957 is quashed.

14. 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, which on being filed, the learned Magistrate may proceed in accordance with law under Section 4/21 of the Mines and Minerals (Development and Regulations) Act, 1957.

Order Date :- 8.11.2023

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