

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46458 of 2013

=====

1. Meera Sharma Wife of Ashwani Kumar Sharma Resident Of Nawaratan
Hata, P.S.- K. Hat, District- Purnea.

.... Petitioner/s

Versus

1. The State of Bihar
 2. Kamleshwar Rajak Son of Babu Jan Rajak R/Village- Ramchandra Pur,
 P.S.- Sarai Ranjan, Mines Inspector, District- Banka.

.... Opposite Party/s

=====

Appearance:

For the Petitioner/s : Mr. N.K.Agarwal
 Dr. Bidhu Ranjan

For the Opposite Party/s Mr. Harendra Prasad (App)

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

05/ 24.05.2017 Heard learned counsel for the petitioner as well as learned
 Addl. Public Prosecutor for the State.

Several trucks laden with sand were intercepted and seized
 by the informant and other officials. Truck of the petitioner was also
 seized.

Mines Inspector-cum-competent officer, Banka gave a
 written report to Officer-in-charge, Katoria Police station, Banka for
 institution of the FIR and thereafter, Katoria P.S. case no. 130/2012
 was registered under rule 40 of the Bihar Minor Mineral Concession
 Rules, 1972 and section 379 of the Indian Penal Code. The matter was
 investigated and after investigation, police submitted charge sheet
 against the petitioner and others and thereafter, learned court below
 took cognizance for the offence punishable under section 379 of the
 Indian Penal Code and rule 40 of the Bihar Minor Mineral Concession
 Rules, 1972 passing impugned order dated 10.09.2012 which has been
 challenged in this quashing petition.

Learned counsel appearing for the petitioner submits that



rule 41 of the Bihar Minor Mineral Concession Rules, 1972 says that no court inferior to that of a Magistrate of the First Class shall try any offence punishable under these rules and no court shall take cognizance of any offence under these rules, except upon a complaint made in writing by the Competent Officer or Deputy Director of Mines or Additional Director of Mines or Director of Mines or any other officer empowered by the Government. He further submits that in the present case, admittedly, cognizance has been taken on the basis of police report. Neither official of the Mines department nor any competent authority filed complaint petition. It is further submitted by him that so far as section 379 of the IPC is concerned, there is nothing to show that the aforesaid offence is made out and moreover, police inserted the aforesaid section with an intent to make the offence graver which is completely abuse of the process of the law.

On the other hand, learned Addl. Public Prosecutor refutes the aforesaid submissions arguing that written report was submitted by Mines Inspector who is competent authority and admittedly, on the basis of the aforesaid written report, present case was lodged and, therefore, it can not be said that official of the Mines department has not made any complaint and so far as section 379 of the IPC is concerned, there is enough material to constitute the aforesaid offence as at the time of seizure, the petitioner failed to disclose her ownership on the seized truck.

It is relevant to refer rules 40(5) and (6) of the Bihar Minor Mineral Concession Rules, 1972.

(1) -----

(2) -----

(3) -----

(4) -----



(5) The Competent Officer or Deputy Director(Mines) or Additional Director (Mines) or Director of Mines making an arrest under sub-rule (4) of these rules shall within 24 hours of the arrest, take or send the person arrested before the Magistrate having jurisdiction in the case along with a complaint in writing regarding the offence committed by the person.

(6) The Competent Officer or Deputy Director (Mines) or Additional Director (Mines) or Director of Mines may release the person arrested on his executing a bond to appear before the Magistrate having jurisdiction in the case if and when so required.

(7)-----

(8)-----

(9)-----

(10) -----

I would also like to refer rule 41 of the aforesaid Rules which says that no court inferior to that of a Magistrate of the First Class shall try any offence punishable under these rules and no court shall take cognizance of any offence under these rules, except upon a complaint made in writing by the Competent Officer or Deputy Director of Mines or Additional Director of Mines or Director of Mines or any other officer empowered by the Government.

Combined perusal of rules 40 and 41 of the Bihar Minor Mineral Concession Rules, 1972 goes to show that if a person commits the offence under the aforesaid rules and is arrested on the spot, the competent authority is duty bound to produce him before the Magistrate along with a complaint in writing regarding the offence committed by the person within 24 hours of his arrest and furthermore, it is also obvious from the rule 41 that a Magistrate of the First Class shall try offence committed under the rules and furthermore, no court has got jurisdiction to take cognizance under



rules, except upon a complaint made in writing by the concerned official. Therefore, both the aforesaid rules go to show that competent person as described in the aforesaid rules can only file written complaint and the court can take cognizance and proceed with the trial only on the basis of written complaint.

In the present case, admittedly, learned court below has taken cognizance for the offence under rule 40 of the aforesaid Rules on the basis of the police report and not on the basis of written complaint filed by the Mines Inspector. The word 'complaint' has not been defined in the aforesaid rules. The word 'complaint' has been defined under section 2(d) of the Cr.P.C, 1973 which says that complaint means any allegation made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person, whether known or unknown has committed an offence but does not include a police report. The aforesaid section 2(d) contains one explanation which says that if a report is made by a police officer in a case which discloses after investigation the commission of a non-cognizable offence and in that circumstance, the aforesaid police report shall be deemed to be treated as complaint petition.

In the present case, admittedly, Mines Inspector gave a written report to officer-in-charge of the concerned police station and after investigation of the case, police submitted police report under section 173 of the Cr.P.C before the concerned court and on the basis of the aforesaid police report submitted under section 173 of the Cr.P.C, the learned Magistrate passed the impugned order. The report submitted under section 173 of the Cr.P.C does not come under the definition of complaint and, therefore, report submitted under section 173 of the Cr.P.C can not be treated as complaint. It is obvious from



the aforesaid discussions that Mines Inspector has not made any complaint to the court whereas the rule 41 of the aforesaid Rules clearly says that the court can take cognizance only on the basis of written complaint filed by the competent official. Therefore, in my view, the court below committed error in taking cognizance of rule 40 of the Bihar Minor Mineral Concession Rules, 1972. So far as section 379 of the IPC is concerned, present case was lodged when the truck of the petitioner laden with sand was seized by the Mines official and therefore, it appears that there is no ingredient of section 379 of the IPC and learned court below committed error in taking cognizance of the offence of section 379 of the IPC.

No doubt, cognizance is taken of the offence and not against accused but in the present case, the court below had got no jurisdiction to take cognizance of the offence of rule 40 of the Bihar Minor Mineral Concession Rules, 1972 and, therefore, there is no cognizance of the aforesaid offence in the eye of law. Hence, in my view, the continuance of the prosecution against the petitioner seems to be an abuse of the process of the court. Therefore, in the aforesaid circumstances, I have no option but to quash the cognizance order dated 10.9.2012 passed in Katoria P.S. case no. 130/2012.

Accordingly, this quashing petition is allowed and impugned order dated 10.9.2012 passed in Katoria P.S. case no. 130/2012 stands quashed.

shahid

(Hemant Kumar Srivastava,J)

U		T	
---	--	---	--

