IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38502 of 2014

Arising Out of PS. Case No.-108 Year-2014 Thana- AMARPUR District- Banka
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Raghav Chandak @ Raghav S/o Ashok Chandak Director, Mahadev Enclave Pvt. Ltd. B- 37, Ayodhya Marg, Hanuman Nagar, Jaipur, Rajasthan.

... ... Petitioner/s

Versus

The State of Bihar.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Hemant Kumar, Adv
For the State	:	Mr. ANIL KUMAR(APP)
For the Mines Department:		Mr. Rajendra Prasad, Spl. P.P. Mines.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 12-10--2017

Heard learned counsel for the parties.

The present application under Section 482 of the Cr.P.C has been filed for quashing the order dated 11.08.2014, passed by the learned Chief Judicial Magistrate, Banka in Amarpur P.S. case No. 108 of 2014 (G.R. Case No. 743 of 2014), by which cognizance has been taken against the petitioner under Section 40 and 49 of the Bihar Minor Mineral Concession Rules 1972.

Briefly stated, the facts of the case is that one FIR was lodged by the Mines Inspector, Banka alleging that the company of M/s Mahadev Enclave Pvt. Ltd had been operating on daily basis, the sand ghat for the year 2014. On 03.05.2014, it was found that the settlee company and other accused persons had been forwarding 140 trailors of sand to other place by way of illegal mining and storage. It has been further alleged that the sand ghat between Ghogha Vear to Singhnan are restricted ghats and accordingly the accused persons committed cognizable offence under Rule 4, 40 and 49 of the Bihar Minor Mineral Concession Rules 1972 and Bihar Mineral (Illegal Mining, Storage) Rules, 2003. An FIR was lodged by the Mines Inspector, Banka pursuant to which investigation was done by the local police and chargesheet vide chargesheet No. 101 of 2014 dated 30.06.2014 was submitted in the court of learned C.J.M. Banka. In the chargesheet, the petitioner was not sent-up for trial as the investigation agency found no material in course of investigation against the company of the petitioner much less against the petitioner.

It has been submitted by the learned counsel appearing on behalf of the petitioner that the company of the petitioner was settled the sand Ghats at Banka Gr. I, II and III for the year 2013 and separate agreements were executed in respect thereof.

After expiration of the settlement period on 31.12.2013 the department of Mines and Geology, Govt. of Bihar decided to continue with the erstwhile settlee on daily basis and accordingly a letter dated 07.01.2014 bearing Ref. No. 58/M issued to all the District Magistrates were informed of the decision.

Pursuant to the said decision of the Govt. of Bihar, the Mines Inspector, Banka informed all concerned about the continuance of the company as settlee on daily basis for the Sand Ghats within Gr. I, II and III, wherein, Incharge of the business of the compay at Banka was specificaly named as Rajwansh Singh, who in fact was responsible for the business of the company at Banka. The petitioner is one of the Directors of the company named above and the petitioner was not the Incharge of business of the company specially with regard to day to day mining act at Banka and as such the petitioner is not covered by Section 23 of the Mines and Mineral(Development and Regulation) Act, 1957, which renders the impugned order taking cognizance bad and unsustainable in the eye of law.

Section 22 and 23 of the Mines & Minerals (D&R) Act, 1957, for sake of brevity and clarity is quoted hereinbelow:-

> "**22. Cognizance of offences:-** 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 behalf by the Central Government or the State Government.

23. Offences by Companies.- (1) If the person committing an offence under this Act or any rules made thereunder is a company, every person who at the time the offence was committed was in-charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

Rule-41 of Bihar Minor Mineral Concession Rules, 1972 reads as follows:-

"41. Offence Cognizable upon written complaints-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."

The liability of the Director of a company for offences committed by the company has been settled by the Apex Court in a number of cases. In a recent judgment of the Supreme Court in the case of ***Ashoke Mal Bafna vs Upper India Steel Mfg & Engg. Co. Ltd*** reported in ***AIR 2017 Sc 2854,*** the Supreme Court has held that the Director of a company cannot be held liable for any offence committed by the company only in certain circumstances, and the role played by the said Director has to be stated in the complaint case. Relevant portion of the judgment reads as follows:-

> "8. In Girdhari Lal Gupta v. D.H. Mehta @ Anr., (1971) 3 SCC 189, this Court observed that a person 'in charge of a business' means that the person should be in overall control of the day to day business of the Company.
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> 9. Interpreting the provisions of Section 141 this Court in National Small Industries Corporation v. Harmeet Singh Paintal & Anr. (2010) 3 SCC 330 observed that Section 141 is a penal provision

creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore not sufficient to make a bald cursory statement in a complaint that the director (arrayed as an accused) is in charge of and responsible to the Company for the conduct of business of the Company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner the accused was in charge of or was responsible to the Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes especially where such statutes create vicarious liability.

10. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to to how and in what manner the accused was responsible. Simply because a person is a Director of defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of business at the time of commission of an offence will be liable for criminal action[See: Pooja Ravinder Devidasani v. State of Maharashtra & Ors. AIR 2015 SC 675].

11. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the company under Section 141 of the Act, there must be specific averments against the Director showing as to how

> and in what manner the Director was responsible for the conduct of the business of the Company."

Learned counsel for the petitioner has raised other issues also on which the order of cognizance taken against the petitioner is bad in law.

After investigation, police did not sent up the petitioner for trial. On the basis of supervision note, the court below has differed with the opinion of investigating officer and has taken cognizance against the petitioner contrary to the view of investigating officer. It is true that the Magistrate is not bound by the opinion of the Investigating officer and if there are sufficient materials to proceed against the accused person, which has come during investigation, the court is empowered to take cognizance against such accused-person and can summons them to face the trial.

In the present case, cognizance has been taken on the basis of supervision report of the supervisory officer and as such no cognizance could have been taken on the basis of supervision note and on such grounds also the order taking cognizance against the petitioner is not sustainable in the eye of law.

In view of the settled law the cognizance order taken against the petitioner being the Director of the company is not sustainable in the eye of law and morever, if the cognizance has not been taken against the company, no cognizance can be taken against its Director.

For the reasons as stated above, the order taking cognizance against the petitioner dated 11.08.2014 is not sustainable in the eye of law, as such the order taking cognizance so far it relates to the petitioner is quashed.

The petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	NAFR
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