

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51236 of 2017

Arising Out of PS. Case No.-137 Year-2017 Thana- TARAPUR District- Munger

Rajeev Yadav, Son of Rajkumar Yadav, resident of Village- Baggha, P.S.- Sambhuganj, District- Banka.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Kumar Kamal Nayan
For the Opposite Party/s :	Mr. SRI AJAY KUMAR -2
For the Mining Deptt. :	Mr. Naresh Dixit, Advocate

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 09-11-2017 Heard learned counsel for the parties.

The petitioner is apprehending arrest in a case registered for the offences punishable under sections 307,353 and 188 of the IPC, section 4/40 of Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as '1972 Rules') and Rule 8 Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003 (hereinafter referred to as '2003 Rules').

The prosecution case got initiated with the written report of Brajesh Kumar, SHO of Tarapur Police Station, to the effect that during inspection one tractor loaded with sand was intercepted. The driver was asked for the challan for transporting the sand, but he failed to produce the same and hence he was directed to take the tractor to the police station, in the meantime, at 1.40 P.M. one person came and disclosed his name as Rajeev Yadav,



the petitioner, claiming to be the owner of the tractor and sat on the driving seat to take the tractor to the police station but he started driving the tractor to his house and while doing so, he dashed the police jeep and started fleeing away with the tractor and when the bodyguard of the informant Amit tried to stop him, he tried to run the tractor over him, but some how or the other he managed to save himself. In course of taking the tractor, the petitioner also dashed one person namely, Nawal Paswan going on bicycle and thereafter he lost balance, as a result, the tractor fell into a ditch. Consequently, the FIR was registered.

It is submitted by learned counsel for the petitioner that the petitioner was carrying sand by virtue of a valid challan which has been brought on record as Annexure 2 but maliciously, in spite of showing the challan to the informant by the driver, the tractor was intercepted and on protest being made, a false case has been lodged. The entire FIR does not suggest whether the statement of the bicycle rider who was dashed by the petitioner was recorded or not, or whether he received any injury. The FIR also does not suggest that the officials of Mining Department were either informed or present at the place of seizure. It is further submitted that Rule 4 of 1972 Rules is not a penal provision



which only prohibits the mining operation without permit or mining lease. The accusation is not of illegal mining but transporting the sand illegally.

So far as Rule 40 of 1972 Rules is concerned, it prescribes penalty for unauthorized extraction and removal of mineral but the same prescribes the punishment for a simple imprisonment which may extend to six months or with a maximum fine, of Rupees Five Thousand or with both. So far as Rule 8 of 2003 Rules is concerned, it prescribes the penalty of imprisonment which may extend to two years or with fine which may extend to Ten Thousand Rupees along with price of the material or royalty with other taxes if someone contravenes the provision of Sub-rule (4),(5) and (5)(c) of Rule 6. Rule 6 prescribes establishment of the check-posts, barriers, weighment and inspection of minerals in transit but the whole exercise under Rule 6 has to be done by the officers of the Mining Department. Hence, no offence either under 1972 Rules or 2003 Rules is made out.

This is also not in dispute that Amit Kumar has not received any injury nor any injury report of Nawal Paswan is on record, hence no offence under section 307 of the IPC is made out and the accusation does not constitute any offence under



Section 188 of the IPC.

Mr. Naresh Dixit, learned counsel appearing for the Mining Department submits that to prevent illegal mining or transportation, the Mining Department has to take the help of police personnel and the provisions of the Act and Rules cannot be implemented without the help of the police. In the present case, since the petitioner tried to take the tractor to his house instead of taking it to the police station and dashed the police personnel, hence offence under section 307 of the IPC is made out.

However, since the copy of the brief has been served upon Mr. Dixit today itself, hence he cannot express opinion with regard to the validity of the challan as contained in Annexure 2.

Considering the rival submissions of the parties, in view of the fact that the petitioner has brought on record the copy of the challan on the basis of which the sand was being transported, the genuineness of which has not been challenged, none received any injury and statement made in paragraph 3 of the petition that the petitioner has no criminal antecedent, let the petitioner above named be released on anticipatory bail in the event of arrest or surrender within 12 weeks on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like



amount each to the satisfaction of the learned ACJM- IV,
Munger in connection with Tarapur P.S. Case No. 137 of 2017.

(Dinesh Kumar Singh, J)

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