IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.490 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- KISANGANJ

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Md. Israil son of Late Haji Wasimuddin resident of Village Tupamari, P.O. Belwa, Police Station and District- Kishanganj.

.... Petitioner

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar, Patna.
2. Director General of Police, Bihar, Patna.
3. Deputy Inspector General of Police, Purnea, Patna.
4. Superintendent of Police, Kishanganj.
5. Inspector of Police, Galgaliya Police Station, district- Kishanganj, Bihar.
6. Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Sanjeev Ranjan, Adv.
For the Respondent/s : Mr. Kinkar Kumar, S.C.9.
: Mr. Rakesh Kuamr Sharma,A.C. to S.C.9.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date: 23-11-2017

Heard learned counsel for the parties.

2. This writ application has been preferred for quashing the first information report of Galgaliya P.S.Case No. 06 of 2016 registered under Sections 379 and 411 of the Indian Penal Code as well as Section 40 of the Bihar Minor Mineral Concession Rules, 1972.

3. Submission of the learned counsel for the petitioner is that the petitioner is a bonafide licence holder through registered deed of lease executed by the Govt. of Bihar dated 10.03.2015 vide Annexure-2 to excavate sand

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from different rivers in the district of Kishanganj, where the offence is alleged to have taken place. He further submits that the lease was to expire in the year 2019 and a bare perusal of the terms and conditions mentioned in the lease deed would reveal that there is no violation of the terms and conditions by the petitioner. Therefore, the offences alleged are not made out against the petitioner.

4. He further submits that a bare perusal of the FIR would reveal that no offence is disclosed against the petitioner as alleged rather the FIR speaks that on 25.02.2016, the named persons were found in illegal mining of sand. The authorities further found hoarding of sand and sign of digging, and trucks were also parked thereat. Some of which were loaded with sand and on one of the truck, a blank challan was found which was of the petitioner. There is no further allegation in the FIR against the petitioner.

5. Learned counsel for the respondents submits that a letter was circulated to all the District Magistrates by the Govt. of Bihar vide Annexure-B drawing their attention towards the order dated 19.01.2016 passed by the National Green Tribunal, Eastern Zone Bench, Finance Centre, Kolkata, whereby the mining of sand in the State of Bihar was restrained till certificate of environmental clearance

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is obtained by the Miners.

6. After hearing the parties, I do no find that there is any allegation of commission of mining by the petitioner in the FIR. Therefore, there is no allegation of commission of mining activity in spite of the prohibitory order passed by the National Green Tribunal. There is no allegation of commission of theft or allegation of possession of stolen property by the petitioner. Rule 40 of the Rules aforesaid does not apply as there is no allegation of illegal mining being committed by the petitioner. Hence, criminal prosecution of the petitioner would amount to abuse of the process of the court.

7. Accordingly, the aforesaid FIR so far it relates to the petitioner stands quashed and this writ application is allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.11.2017
Transmission Date	24.11.2017

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