

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14761 of 2013

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1. Ram Bachan Singh Son of Late Sheo Nath Singh Resident of Village- Nadokhar,
Police Station- Kudara, District- Kaimur

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Mines And Minerals
Department, Government of Bihar, Vikas Bhawan, Patna
2. The Auction Officer, Mines, Patna Circle, Patna
3. The District Mines Officer, Kaimur at Bhabua
4. The District Superintendent of Police, Kaimur at Bhabua

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Tiwary, Adv.

For the Respondent/s : Mr. Dinbandhu Singh, Adv.

Mr. Ravi Kumar, A.C. to G.P.13

Mr. Lalan Kumar, A.C. to Mr. Naresh Dixit, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-12-2017

Heard Mr. Uma Shankar Tiwary, learned counsel for the
petitioner, Mr. Ravi Kumar, A.C. to G.P.13 for the State and Mr.
Lalan Kumar A.C. to Mr. Naresh Dixit for the Mining Department.

With the consent of the parties the writ petition has been heard
with the view to final disposal.

The petitioner is aggrieved by the proceedings arising from
Case No. 446 of 2007-08 pending in the court of District Certificate
Officer, Mines, Circle Office, Patna including the order dated
11.12.2012 whereby the directions have been issued for issuance of
warrant for recovery of the certificate amount which is to the tune of
Rs. 1,13,510/- together with the warrant of attachment impugned at
Annexure-3 to the writ petition.

It is the argument of Mr. Tiwary learned counsel for the



petitioner that on a presumptuous finding that the petitioner was running a commercial Chimni that an F.I.R. was instituted against the petitioner and 18 others under the provisions of Section 374 of the Indian Penal Code read with Rule 4 of the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as 'the Rules') giving rise to G.R. Case No. 419 of 1997 arising from Kudara P.S. Case No. 64 of 1997. In reference to the judgment and order of the criminal court at Annexure-2 passed in the criminal case, he submits that on the failure of the department to drive home the charges of illegal operation of Chimni that all the accused including the petitioner were acquitted. He submits that despite this position and without any opportunity to the petitioner to explain that some kind of recovery proceeding was initiated in which orders have been passed, which is ex parte.

A counter affidavit is being filed and Mr. Ravi Kumar learned State counsel while admitting to the result of the criminal case in reference to paragraph 10 of the counter affidavit submits that an acquittal in the criminal case on the failure of the prosecution to lead evidence would not exempt the petitioner from making up the loss of revenue to the Government by operating the Chimni. He submits that it is for this purpose that the proceedings in question was started and which has resulted in the attachment of property. The counter affidavit however is silent as to under what jurisdiction the attachment order



has been passed once the department has failed to drive home the allegation of illegal operation of a commercial chimni. The counter affidavit is also silent as to what kind of proceedings under 'the Rules' was initiated against the petitioner resulting in the order of attachment. The counter affidavit is again silent on the issue whether the order passed by the criminal court has been appealed against.

Having heard learned counsel for the parties and considering the statement made by the respondent themselves at paragraph 6 of the counter affidavit in which it is admitted that for alleged illegal operation of a commercial Chimni the criminal case in question was instituted against the petitioner and which has resulted in acquittal of the petitioner and others, in absence of any pleadings in the counter affidavit as regarding any other form of proceedings drawn against the petitioner for quantifying the penalty, the warrant of attachment, is without sanction of law.

Mr. Lalan Kumar appearing for the Mines Department in an attempt to save the situation, informs that the attachment proceeding was initiated in the year 2007 i.e prior to the acquittal order passed by the criminal court on 15.6.2010. The submission made by Mr. Lalan Kumar in fact further strengthens the case of the petitioner, to render the attachment proceeding unsustainable because even if under some impression the attachment proceedings was initiated, the failure of the prosecution to drive home the charge of illegal operation of Chimni,



the matter should have been put at rest and the attachment proceedings so initiated against the petitioner ought to have been dropped on the acquittal of the petitioner in the criminal case.

As observed earlier, the counter affidavit nowhere mentions whether the attachment proceedings finds its root in any other proceeding other than the criminal case. In fact paragraph 6 of the counter affidavit would confirm that the attachment order is entirely resting on the institution of the criminal case which has resulted in the acquittal of the petitioner.

For the reasons so discussed, the entire attachment proceeding arising from Case No. 446 of 2007-08 passed by the District Certificate Officer, Mines, Circle Office, Patna dated 11.12.2012 along with the warrant of attachment which is impugned at Annexure-3 of the writ petition cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2017
Transmission Date	NA

