

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45173 of 2013

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

Subhash Chandra Yadav @ Subhash Yadav, Son of Manlal Yadav, resident of Village Trigubani, P.S. Krishnagarh, District Bhojpur.

..... Petitioner

Versus

The State Of Bihar

..... Opposite Party

Appearance :

For the Petitioner : Mr. Ajit Kumar, Advocate.

For the Opposite Party : Mr. J. Upadhya, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

Date: 12-01-2017

Heard learned counsel for the petitioner and learned counsel for the State.

The present application has been filed for quashing the order dated 15.07.2013, passed by the learned Chief Judicial Magistrate, Munger, in connection with Dharahara P.S. Case No. 89 of 2010, whereby, after taking cognizance under Sections 379, 405, 420, 468, 471/34 of the IPC, 4 of the Mines and Minerals (Development and Regulation) Act and Rule 4, 40 of Bihar Minor Minerals Concession Rules, 1972 and Sections 26, 41 and 42 of the Indian Forest Act and process has been issued against the petitioner besides others accused.

The prosecution case, in brief, is that one Raj Kishore Singh, the Mining Inspector, Munger, was checking the Trucks loaded



with stone on 15.07.2010. At 6.45 P.M. the trucks in question were stopped for checking. They were loaded with Silica which were being transported illegal in complete violation of the law. The trucks were carrying forged Challan allegedly to be issued by the Department and the Challan bearing signature of Subhash Yadav and the official seal. The accused persons i.e., the owner-cum-driver, were arrested and case was registered against the petitioner, owners-cum-drivers and the suppliers M/S. Ashirwad Minerals and Anshuman Industries, who were causing loss to the Government.

It has been submitted on behalf of learned counsel for the petitioner that from perusal of the F.I.R., no offence is being made out under the alleged Sections in which the cognizance has been taken. As per the F.I.R., the petitioner is alleged to be the Forest Guard. He has got no involvement in the theft of forest property or in illegal mining. The petitioner further denies his signature which is alleged to be signed by him. It is further submitted that the cognizance has been taken without any sanction order as to when without sanction, no cognizance could have been taken against the petitioner. Hence, the order of cognizance is bad. Learned counsel for the petitioner has relied upon the judgment passed in the case of (Uttar Pradesh Vs. Paras Nath Singh) (2009) 6 SCC 372.

It has been submitted on behalf of learned counsel for the



State that from bare perusal of the F.I.R., it is evident that the offence is cognizable. Hence, the offence under Sections 379, 405, 420, 468, 471/34 of the IPC., 4 of the MMDR Act and 4, 40 of BMMC Rule, 1972 and 26, 41 and 42 of the Indian Forest Act. is made out. The matter relates to illegal mining and creation of forged documents for the purpose of transportation of forest property. It is further submitted that no longer it is in dispute that the question of sanction can be considered at any stage of the proceeding. In addition to its submission, learned counsel for the State has relied upon the judgment passed in the case of (Suresh V Pandey Ajay Bhushan) (1998) 1 SCC 205. (Matajog Dobey V H.C. Bhari) AIR 1956 SC 44; (Abdul V State) (2000) 8 SCC 500; (Birendra V State) 2000(8) SCC 498; (P.K. Pradhan V State) (2001)6 SCC 704; (Raj Kishor V Kamleshwar) (2002) 6 SCC 543.

The primary object behind Section 197 as to protect public officer who have acted in discharge of their duties or purported to act in discharge of such duties as being held by the Supreme Court of India in the case of Sankaran Moitra V Sadna Das reported in 2006(4) SCC 584; AIR 2006 SC 1599. But, the Section does not extend in protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official



duty. In the present case, the petitioner has denied his signature over the Challan, which is a ‘fact in issue’ and is to be proved or disproved during trial, therefore, at this stage by denying, any omission or commission on his part, he can not take shelter of Section 197 of the Code of Criminal Procedure, even.

Considering the aforesaid facts and circumstances, the present application is dismissed.

The interim stay granted to the petitioner vide order dated 25.10.2013, stands vacated.

U.K./-

(Sudhir Singh, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.02.2017.
Transmission Date	

