

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40825 of 2014

Arising Out of PS. Case No.-28 Year-2012 Thana- DIGHA District- Patna

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Malka Kumari D/o Shri Krishna Murari Yadav, W/o Shri Sanjay Kumar
resident of village - Makhdumpur, P.O. Digha Ghat, P.S. Digha, District -
Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Kumar S/o Late Dr. J.N. Prasad, Assistant Director, District Mining
Office, Patna

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Shri Prakash Srivastava, Advocate Ms. Anu Priyadarshni, Advocate Ms. Rinki Kumari, Advocate
For the State	:	Mr. Bhanu Pratap Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 08-03-2018

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

2. The petitioner seeks quashing of the criminal prosecution
as well as the order of cognizance dated 29.10.2012, passed by
learned CJM, Patna in Digha P.S. Case No.28 of 2012 thereby
taking cognizance of the offence under Section 406 IPC read with
Sections 26 A, 4, 40(7) of the Bihar Minor Mineral Concession
Rules, 1972 (hereinafter referred to as 'the Rules').

3. Learned counsel for the petitioner submits that the
petitioner, a brick kiln owner, having earlier licence in her name
deposited the fee with penal interest for the financial year 2011-12



under Rule 43(A) of the Rules and licence was granted on 02.03.2012 which expired on 30.06.2012; whereas learned counsel for the State submits that admittedly petitioner had no licence on 23.02.2012 when FIR was instituted. Subsequent to that, the petitioner deposited the royalty charge but in view of Rule 40 of the Rules for committing offence, that is extracting earth for brick kiln is punishable with simple imprisonment extending to six months or with fine, which may extend to Rs.5000/- or with both. Moreover, under Rule 40 (8), the government can recover from that person rent, royalty or taxes as the case may be for the period during which the land was occupied by that person, so the allegation is that the petitioner was found running the brick kiln in the year 2011-12 without any licence and the royalty or any tax pertaining to quarrying of the earth.

4. Having considered the rival submissions and on perusal of the record, the Court finds that the day the case was instituted against the petitioner, that is on 23.02.2012, admittedly there was no licence with the petitioner for running the brick kiln under the Rules. Application for quarrying permit is filed under Rule 28 of the Rules and it is disposed of according to Rule 28(A) but admittedly no such application prior to the said period was filed seeking permit for quarrying in the year 2011 for running the brick



kiln, hence there is sufficient material on the record making out a *prima facie* case for taking cognizance against the petitioner. In view of Section 4 of the Rules, no one can do mining operation without any permit or mining lease. Admittedly in the year 2011-12, there was no permit with the petitioner and found running a brick kiln without having licence in violation of Rule 4 of the Rules, so *prima facie* case under Sections 40(1), 40(8) and 4 of the Rules is made out. However, it is observed that no *prima facie* case under Section 406 IPC is made out as well as Rule 26(A) of the Rules because Section 26(A) of the Rules relates to consolidation of royalty on brick kiln that is not a penal provision.

5. With the aforesaid observation, the quashing application stands dismissed.

(Arun Kumar, J)

S.KUMAR/-

AFR/NAFR	AFR
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