

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Criminal Writ Jurisdiction Case No.1910 of 2017

Arising Out of PS.Case No. -109 Year- 2017 Thana -PATLIPUTRA District- PATNA

- =====
1. Broad Son Commodities Pvt. Ltd., Dr Himanshu Complex, Block Road, Koilwar Chowk, P.S.-Koilwar, District-Bhojpur, Bihar through its Director, Krishna Mohan Singh, son of late Parmeshwar Singh, r/o village-Bagmajhaun, P.S. Koilwar, District-Bhojpur, Bihar
  2. Mithilesh Singh, son of late Gauri Singh, resident of Gauri Kutir, Anugrah Nagar, Dhansar, Dhanbad, Jharkhand Director, Broad Son Commodities Pvt. Ltd. Dr. Himanshu Complex, Block Road, Koilwar Chowk, P.S.-Koilwar, District-Bhojpur, Bihar.

.... .... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Department of Home, Government of Bihar, Patna
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Principal Secretary, Department of Mines, Government of Bihar, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Mining Development Officer, Muzaffarpur, Vaishali.

.... .... Respondent/s

with

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### Criminal Writ Jurisdiction Case No. 10 of 2018

Arising Out of PS.Case No. -523 Year- 2017 Thana -BIHTA District- PATNA

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M/s Broad Son Commodities Pvt. Ltd., Dr. Himanshu Complex, Block Road, Koilwar Chowk, P.s. Koilwar, District- Ara (bhojpur) through its Director, Ashok Kumar, Son of Late Ramchandra Sao, Resident of Village- Pareo, P.S.- Bihta, District- Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar, Through The Principal Secretary (home), Government of Bihar, Main Secretariat, Patna.
2. The Director General of Police, Home (Police) Department, Governmet of Bihar, Main Secretariat, Patna.
3. The Principal Secretary, Mines and Geology Department, Government of Bihar, New Secretariat, Vikas Bhawan, Patna.
4. The District Magistrate-cum-Collector, Patna.
5. The Senior Superintendent of Police, Patna.
6. The Superintendent of Police, Patna.
7. Assistant Director, Mines and Geology Department, Patna.
8. The Officer-in-Charge, Bihta, P.S., Patna.

.... .... Respondent/s

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**Appearance :**

(In Cr. WJC No.1910 of 2017)



For the Petitioner/s : Mr. S.B. Upadhyay, Sr.Adv.  
Mr. Rajiv Kumar Singh, Adv.  
For the Respondent No.3: Mr. Naresh Dikshit, Adv.  
(In Cr. WJC No.10 of 2018)  
For the Petitioner/s : Mr. S.B. Upadhyay, Sr.Adv.  
Mr. Rajiv Kumar Singh, Adv.  
For the Respondent No.3: Mr. Naresh Dikshit, Adv.

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**CAV JUDGMENT**  
**Date: 05-10-2018**

These two criminal writ applications have come up for consideration together on the request of the parties and have been heard and are being disposed off by this common judgment.

2. Cr.W.J.C. No.1910 of 2017 has been filed seeking quashing of the First Information Report (in short 'FIR') being Patliputra P.S. Case No.109 of 2017 instituted under Sections 420, 406 and 379/34 of the Indian Penal Code and Section 21 of the Mines and Minerals (Development and Regulation) Act, 1951 (hereinafter referred to as the 'MMDR Act') read with Rule 40 of the Minor Minerals Concession Rules, 1972 (hereinafter referred to as the 'Rules of 1972'). The FIR has been instituted on the written report of the Mineral Development Officer, Muzaffarpur alleging that on 29.03.2017 in course of inspection of the Sand Ghats along with a team constituted for that purpose when the informant reached at Digha-Kurji Balu Ghat it was found that just beside the demarcated area, near Digha-Sonepur under constructed road-cum-rail pul at a distance of about 1.5 km towards east illegal extraction/mining of



sand had taken place. It was found that in an area of approximately 800 meters X 200 meters this illegal mining has been done in which sands have been extracted by going up to six meters in depth. It is also alleged that for this area no approved mining plan is there in favour of the settlees and the mining activities are taking place without consent of the competent authority. It is further alleged that even in the inside demarcated area in an area of 200 metersX20 meters extraction of sand has been done by mining for more than three meters in depth. It is alleged that all the Sand Ghats of Patna district have been settled in favour of M/s Broad Son Commodities Pvt. Ltd. through its proprietor Sri Mithlesh Singh (the writ petitioner) who had indulged in illegal mining under the areas outside the approved mining plan. Several violations of the terms and conditions of the work order have been mentioned in the FIR.

3. In Cr.W.J.C. No.10 of 2018, the petitioner has prayed for quashing of the FIR bearing Bihta P.S. Case No.523 of 2017 dated 31.07.2017 under Sections 406, 420, 467, 468, 471, 120B/34 of the Indian Penal Code and Rule 3 of the Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003 (hereinafter referred to as the 'Rules of 2003'). This FIR has been lodged at the instance of the Assistant Director, District Mining Office, Patna who has alleged that on information received that in Lai Bazar



stored/stocked sands are being sold illegally, the informant reached the said place and found that some trucks were loaded with sands and they were about to depart whereas some trucks were loading the sands. It is alleged that on seeing the police party the people started fleeing away. The allegation is that for storage of sands the petitioner's company has been granted 32 Stockist licenses and for purpose of transportation of sand by the Stockist Licenses the same is required to be done through the departmental pre-paid transportation challan. It is further alleged that without the said pre-paid challan, transportation of sand is illegal. The FIR further alleges that in course of enquiry it was found that receipt books which were seized from the alleged place were not legal transportation challan and the same were not issued by the office. The challans have been, therefore, seized by the police. The persons who have been arrested are named in the FIR.

4. It appears that during the pendency of the writ applications the investigation of the first case was completed and police submitted a charge-sheet whereupon the learned ACJM-XII, Patna has been pleased to take cognizance vide order dated 26.05.2018 under Sections 420, 406 and 379/34 of the Indian Penal Code and Rule 40 of Rules of 1972 read with Section 21 of the MMDR Act.

5. It further appears that subsequent to the order taking



cognizance, now the charges have already been framed in the trial court under five heads. The petitioner has brought on record the order dated 26.05.2018 passed by learned ACJM-XII, Patna and Form No. 32 showing framing of charges by the learned Magistrate on 30.07.2018. By filing the Interlocutory Application the order taking cognizance and the charge framed have been sought to be challenged in Cr.W.J.C. No.1910 of 2017. The order directing framing of charge has not been brought on record. So far as Cr.W.J.C. No.10 of 2018 is concerned, the petitioner has not filed any interlocutory application and therefore the prayer is restricted to quashing of the FIR in the said case.

**Submissions on behalf of the petitioners.**

6. Mr. S.B. Upadhyay, learned senior counsel representing the petitioner in both the cases submits that so far as the legal issues are concerned, it will be the same in both the cases. In the second case being Cr.W.J.C. No.10 of 2018 slight change in the facts which this Court has already taken note of were brought to the notice of this Court in course of argument.

7. The main contention of learned senior counsel representing the petitioner are as under:-

(i) The order taking cognizance in connection with Patliputra P.S. Case No.109 of 2017 is in contravention of Section 22



of the MMDR Act, 1957 which provides that no court shall take cognizance of any offence punishable under this Act or any Rule made thereunder except upon complaint in writing made by a person authorized in this behalf by the Central Government or the State Government. To support this proposition, learned senior counsel has relied upon a judgment of the Hon'ble Jharkhand High Court in the case of (a) **Pancham Singh Vs. State of Jharkhand and Shri Gyani Prasad Bhagat** reported in **2013(1) JLR 570 (para 14 to 18)** and (b) **State (NCT of Delhi) Vs. Sanjay** reported in **(2014) 9 SCC 772 (para 1, 70-73)**.

(ii) The cognizance and continuation of the said criminal proceedings is also in violation of Article 21 of the Constitution, since it has been initiated in contravention of the established procedure of law. It is the stand of the petitioner that cognizance in the present case is also in violation of Section 4(2) and Section 5 of the Code of Criminal Procedure which provides that all offences under any law shall be investigated, inquired into, tried and otherwise dealt with according to the same provision but subject to any enactment for the time being in force regulating the manner of place of investigation, inquiring into trying or otherwise dealing with such offences. Section 5 provides that nothing contained in the Code shall in the absence of specific provision to the contrary, affect any special or local laws for



the time being in force or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being in force.

8. Learned senior counsel submits that even otherwise on the face of the allegations made in the FIR no criminal offence is made out against the petitioner as there is no ingredient of either Section 21 of the MMDR Act, 1957 or Rule 40 of the Rules of 1972 or under Sections 379, 406, 420/34 of the Indian Penal Code. Learned senior counsel submits that the petitioner is settlee of the Sand Ghat and has paid the entire royalty amount in terms of Rule 26(1)(b) read with Schedule-II of the Rules of 1972, therefore in such circumstance a person who is owner of the Sand Ghat and who has already paid the entire royalty amount over the entire area cannot be said to have committed theft and, therefore, he cannot be prosecuted for the offence alleged under Section 379 and other Sections of the Indian Penal Code.

9. Learned senior counsel further submits that a perusal of Rule 11(A)(a)(b), Rule 11A (d)(e) and Rule 11(B) would show that (i) each river as a whole situated in each district shall be considered as a single stretch, the minimum area of which shall not be less than 5 hectares in any case, (ii) for submission of mining plan by the successful bidder, it is provided that the highest bidder shall submit



the mining plan before the work order is issued and finally it is provided that where the settlement is made by a public auction cum tender, a deed shall be executed in the form “O”. Learned senior counsel has referred the contents of form “O” under Rule 11-B(2) and has relied upon para 4 thereof which reads as under:-

*“4. On receipt of the application for grant of mining lease/settlement for undertaking mining operation for minor minerals, the State Govt. or any person so authorized shall take decision to grant precise area/stretch for the said purpose as per the provisions laid down in the Rules and communicate such decisions to the applicant and on receipt of communication from the State Govt. or any person so authorized of the precise area/stretch to be granted under mining lease, settlement, the applicant shall submit a mining plan duly prepared by RQP and approved by the State Govt.....”*

**10.** It is further submitted that by virtue of Rule 22 of the Rules of 1972 no mining lease/settlement shall be granted by the State government unless there is a mining plan duly approved by the State government or any person authorized in this behalf by the State government. It is submitted that a harmonious reading of Rule 22(1), Rule 22(2) and Rule 11A(1) (d) with para 4 of Schedule IV together with the statutory Form “O” would show that the mining plan shall not be required prior to or at the time of auction rather it shall be



required to be submitted only after the grant has been sanctioned by the State Government. It is submitted that in the present case the allegation is that the petitioner carried out the mining operation beyond the approved mining plan. The settlement deed dated 31.12.2014 has been referred by the learned senior counsel to submit that the deed itself provides remedy for excess mining by laying down a stipulation that the lessee has to pay additional royalty for extraction of mineral and excess of auction amount. It is submitted that such provision existing in the settlement deed is in terms of Annexure-1 to the Sand Policy. The submission is that in terms of para 3(vii) of the Sand Policy the settlee has to pay additional royalty for excess mining. It is thus submitted that in such circumstance no criminal liability may be attached for the allegation made in the FIR. It is reiterated that the petitioner has got settlement over the entire stretch of the river as per Rule 11A (a) of Rules of 1972.

**11.** Learned senior counsel also submits that according to Rule 21A(2)(3) and (4) the consequences of mining contrary to the conditions of environmental clearance would be as per sub-rule (4) which provides that if the lessee commits breach of any of the conditions of environmental clearance his lease shall be liable to be terminated after giving him a notice of at least 30 days for rectification of the said breach and on his failure to do so even during



the said period. It is submitted that Section 23A of the MMDR Act, 1957 provides for compounding offence punishable under the said Act and sub-section(2) specifically provides that where an offence is compounded under sub-section (1), no proceeding or further proceedings shall be taken against the offender in respect of the offence so compounded. Similar provisions are also found in Rule 42 of the Rules of 1972. Learned senior counsel has in fact by referring to a revisional order passed by the Commissioner submitted that the case has been compounded by the Commissioner, Department of Mines vide his order dated 25.01.2018.

**12.** In the aforementioned background, it is submitted that the continuation of the present criminal proceedings is in violation of the Article 21 of the Constitution of India as also against the various provisions of the MMDR Act, 1957 and is also against the provisions of the Rules of 1972. Learned senior counsel has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Bhajan Lal Vs. State of Haryana** reported in **1992 (Supp.1) SCC 335 (para 102)**, **Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others** reported in **1998 (5) SCC 749 (para 22)** and **State of Bihar and Another Vs. Md. Khaliq and Another** reported in **(2002) 1 SCC 652 (para 4)**.

**Stand of the Department of Mines, Government of Bihar**



**13.** As against the submissions made by learned senior counsel for the petitioner, Mr. Naresh Dikshit learned counsel representing the Department of Mines submits that the petitioner being settlee of Sand Ghat has been indulged in illegal mining activities outside the Ghats (Digha-Kurji Area) showed in the approved mining plan. In course of inspection, the inspecting team found violation of the mining plan, the terms and conditions of the settlement and the terms and conditions mentioned in the environment clearance certificate granted by the competent authority. Learned counsel submits that the petitioner is liable to be prosecuted for the illegal mining. It is submitted that only in order to save itself/himself, the petitioner was writing some letters to the police authorities regarding the illegal mining, but without active role of the petitioner being the settlee of the Sand Ghat such illegal extraction of sands could not have taken place, moreover the truth will come in course of trial. It is submitted that the detail report of sand extraction from 01.01.2017 to 31.08.2017 in Patna district at various Sand Ghats shows that the amount of sand extracted from the sand ghats are beyond the environmental clearance capping. It is stated that the amount of sand lifted from the stock maintained within 300 feet is much more than the stock declared by the settlee, which indicated that the sand was excavated from the riverbed directly during the E.C.



prohibition period.

**14.** Mr. Dikshit further submits that contention of the learned senior counsel for the petitioner that offences in the present case have been compounded is not correct inasmuch as it will appear from the order dated 25.01.2018 passed by the Mines Commissioner, Bihar, Patna that the said order was passed in a revision application arising out of the two revision cases and one Misc. case. The said order is being misconstrued by the petitioner to represent that it is an order allowing compound of offence.

**15.** Learned counsel further submits that it would appear from the materials available on the record in the present case that the order taking cognizance in this case was passed on 26.05.2018, however, there is nothing on record that the petitioner filed any application seeking his discharge from the case. The interlocutory application filed by the petitioner in the first writ application nowhere shows that the petitioner had preferred any application seeking discharge before the learned trial court, therefore if the petitioner has not made any prayer before the learned trial court for discharge and has allowed the charge to be framed, at this stage the charge framed vide Annexure-10 series cannot be allowed to be challenged.

**16.** Learned counsel has while referring to the allegations made in the FIR submitted that a perusal of the Rule 40 (8)



of the Rules of 1972 would show that whoever removes minor mineral without valid lease/permit or on whose behalf such removal is made otherwise than in accordance with these rules he be an agent, manger, contractor or a sub-lessee, shall be presumed to be a party to the illegal removal of the minor mineral and shall be liable to pay price thereof and the government may also recover from such person rent, royalty or taxes as the case may be, for the period during which the land was occupied by such person without any lawful authority without prejudice to other action being taken against him under these rules or any other law for the time being in force (emphasis supplied). Learned counsel submits that a perusal of the Rule 40(8) of the Rules, 1972 would show that any removal of minor mineral without valid work order would be covered under this sub-section and further for such illegal mining in violation of the Rules not only for the offences under the Special Statute the petitioner may be charged but he may also be prosecuted under any other law for the time being in force. It is submitted that in the present case the contention of the learned senior counsel that by virtue of Section 22 of the MMDR Act, 1957 cognizance may be taken only upon complaint in writing is wholly misconceived.

It is submitted that in the present case the FIR has been lodged by a competent person of the Department of Mines,



Government of Bihar and police has registered the FIR under various provisions of the Indian Penal Code together with the provisions of the MMDR Act, 1957 and the Rules, therefore, once the FIR has been registered under the various provisions of the Indian Penal Code, the police is competent to investigate into the offences and file a report in terms of Section 173(8) of the Code of Criminal Procedure. Learned counsel submits that the judgment of the Hon'ble Jharkhand High Court in the case of **Pancham Singh** (supra) and that of the Hon'ble Supreme Court in the case of **State (NCT of Delhi)** (supra) are clearly distinguishable in the facts of the present case. It is submitted that in the case of **State (NCT of Delhi)** (supra), the Hon'ble Supreme Court has considered the meaning of the words and phrases "Same offence", "substantially the same offence", "in effect the same offence" or "practically the same offence". In the said case a question arose before the Hon'ble Supreme Court as to whether the case has been instituted against the alleged offenders for mining sand from riverbeds without valid licenses and permits under the MMDR Act and whether the magistrate has the power to take cognizance of such offence upon a police report without a complaint from the authorized officer under Section 22, MMDR Act and whether, mining of sand from riverbed would constitute an offence under Section 379 IPC for dishonestly stealing public property (sand in riverbed constituting a natural



resource), the government being its trustee. The Hon'ble Supreme Court considered the said question in paragraph 30 and 31 of the judgment in affirmative. The Hon'ble Apex Court held that a perusal of the Section 149 to 152 of the Code of Criminal Procedure would show that a police officer of his own authority has the duty to prevent any injury attempted to be committed to any public property or national assets and to prosecute such person in accordance with law. Learned counsel, therefore, submits that the reliance placed by learned senior counsel for the petitioner on paragraphs 70 to 73 of the judgment in the case of **State (NCT of Delhi)** (supra) is wholly misconceived.

**17.** It is further submitted that, in the given facts and circumstances of the present case, the judgments of the Hon'ble Supreme Court in the case of **Bhajan Lal** (supra), **Pepsi Foods Ltd. and Another** (supra) and **Md. Khalique** (supra) would not at all be applicable.

**18.** With regard to Cr.W.J.C. No.10 of 2018, learned counsel representing the Department of Mines submits that Bihta P.S. Case No. 523 of 20147 has been instituted on the written report of the Assistant Director. It is alleged that 32 stockiest licenses were issued authorizing the petitioner for storage of sand at Lai and the authorized persons are entitled to transport the sand through pre-paid challan and



it is settled procedure that without issue of challan, transportation of sand is illegal. It is submitted that in course of raid from a hut situated at the alleged place six books of challan for transportation of sand were found therein out of which 3 books were used and 3 books were intact/unutilized. A sum of Rs.5,67,540/- was recovered from the counter. In presence of two witnesses seizure list were prepared. Several vehicles loaded with sand and empty trucks were seized and thereby altogether 36 persons were arrested and 320 trucks and other vehicles were seized. Learned counsel submits that on the face of the allegations present in the FIR, this Court sitting in its writ jurisdiction under Article 226 of the Constitution of India may not like to interfere with the investigation of the case by considering the defence which is being sought to be raised on behalf of the petitioner on the basis of certain information collected under the Right to Information Act. It is submitted that this Court sitting in its writ jurisdiction would not take upon itself to appreciate the evidences which have been brought on record on behalf of the petitioner by way of Annexures.

**CONSIDERATION**

19. Having heard learned senior counsel for the petitioner in both the writ applications and learned counsel representing the Department of Mines as regards Cr.W.J.C. No.1910 of 2017, this Court finds that the police has already completed the



investigation in the case, after filing of charge-sheet the learned ACJM has taken cognizance and thereafter the charges have also been framed against the petitioner. In the interlocutory application filed by the petitioner nothing has been stated to show that the petitioner had filed any application in the court below seeking his discharge. It is simply stated in paragraph 7 of the interlocutory application that subsequent to the submission of the charge-sheet the learned court below has framed charges against the charge-sheeted accused persons under five heads. A copy of Form No.32 in which the charges have been framed has been brought on record as Annexure-10. The fact that the petitioner is totally silent and has not claimed that any petition seeking discharge was filed before the learned trial court would compel this Court to take a view that at a belated stage, after framing of charge the petitioner has moved the interlocutory application seeking amendment of the writ application. The order framing charge has not been brought on record. In such circumstance where the petitioner did not avail his remedy in the trial court by filing an appropriate application seeking discharge, this Court sitting in its writ jurisdiction under Article 226 of the Constitution of India would not permit the petitioner to challenge the framing of charge directly before this Court at this stage.

**20.** A perusal of the allegations made in the FIR and the



fact that in course of investigation police has found the allegations true and submitted a charge-sheet would further lead this Court to take a view that in the facts of the present case it cannot be said that no prima facie case is made out against the petitioner. There are allegations of mining of sand which is a minor mineral in an area which is not covered under the work order. It means the allegation of illegal mining is in respect of the areas in respect of which there is no approved mining plan. This is the violation of the Rules of 1972 and, therefore, this Court agrees with the submissions of the learned counsel representing the Department of Mines that the case of the petitioner would be covered under Rule 40(8) of the Rules of 1972.

**21.** The submission of the learned senior counsel that the court could have taken cognizance only on the basis of a complaint in writing in terms of Section 22 of the MMDR Act, 1957 would also not appeal to this Court because the Court is well strengthened in its view from the judgment of the Hon'ble Apex Court in the case of **State (NCT of Delhi)** (para 30 and 31) (supra) that the mining of sand from the areas in respect of which no work order has been issued by the Department of Mines is likely to attract the definition of theft under Section 378 of the Indian Penal Code. This is, however, a prima facie view of this Court and such observations are not to be considered by the learned trial court as any opinion of this Court.



Paragraphs 30 and 31 of the judgment of the Hon'ble Apex Court in the case of **State (NCT of Delhi)** (supra) read as under:-

*“31. A perusal of the aforementioned provisions would show that a police officer of his own authority has the duty to prevent any injury attempted to be committed to any public property or national assets and to prosecute such person in accordance with law.*

*32. The policy and object of the Mines and Minerals Act and Rules have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature. The Court cannot lose sight of the fact that adverse and destructive environmental impact of sand mining has been discussed in the UNEP Global Environmental Alert Service Report. As per the contents of the Report, lack of proper scientific methodology for river sand mining has led to indiscriminate sand mining, while weak governance and corruption have led to widespread illegal mining. While referring to the proposition in India, it was stated that sand trading is a lucrative business, and there is evidence of illegal trading such as the case of the influential mafias in our country.”*

**22.** In the aforementioned facts and circumstances as also the judicial pronouncements present on the subject, this Court is of the considered opinion that in the present case it cannot be said that



the registration of the FIR under the various provisions of the IPC and subsequent investigation and cognizance by the learned ACJM is illegal or bad in law. This Court does not find any reason to interfere with the order taking cognizance in the present case.

23. Learned senior counsel for the petitioner has submitted that this is a case of violation of Article 21 of the Constitution of India. This Court would not agree with such submission as according to this Court mere institution of an FIR or the subsequent investigation and order taking cognizance for the offences in respect of which sufficient materials are available on the record cannot be taken as an act of violation of fundamental right of a citizen as contained in Article 21 of the Constitution of India. The petitioner is facing prosecution by virtue of the order passed by a competent court of law and only because he is being tried for the offences in respect of which charges have been framed against him, no case of violation of Article 21 of the Constitution of India is made out. This Court is of the considered opinion that the ratio of the judgment of the Hon'ble Supreme Court in the cases of **Bhajan Lal** (supra), **Pepsi Foods Ltd. and Another** (supra) and **Md. Khalique** (supra) would not be attracted in the facts and circumstances of the present case. These judgments are clearly distinguishable and cannot help the petitioner of these cases.



**24.** This Court also finds that the revisional order passed by the Commissioner, Department of Mines available at page 30 of the rejoinder cannot be said to be a compounding order with respect to the offences alleged in the present case. In the said order, there is a revisional order in respect of dispute with respect to termination of the agreement. There is no whisper of compounding of offences in the order dated 25.01.2018 passed by the Commissioner, Department of Mines, Government of Bihar.

**25.** The submissions of learned senior counsel for the petitioner that in case of excess mining it may at best be a case of additional royalty which the State can recover from the petitioner, is also not acceptable to this Court. Rule 40(8) of the Rules of 1972 clearly provides that for illegal mining by violating the rules there may be any other action which may be provided under any other law for the time being in force. In the opinion of this Court, if the petitioner has allegedly violated the Rules of 1972 and removed minor mineral from an area of which there is no approved mining plan, he cannot come out of the rigours of Rule 40(8) of the Rules of 1972 by offering the additional royalty for excess amount. This submission is also liable to be rejected.

**26.** In Cr.W.J.C. No.10 of 2018, the petitioner is seeking quashing of the FIR. However, a perusal of the allegations mentioned



in the FIR shows that those are liable to be investigated and at this stage this Court sitting in its writ jurisdiction would not be justified in weighing the materials which have been brought by the petitioner by way of Annexures to the writ applications and the rejoinder. The investigation in the case cannot be interfered with in the facts and circumstances of the case stated hereinabove.

**27.** In result, this Court does not find any reason to interfere with the impugned orders and the FIRs which are subject matter of challenge in both the writ applications. These writ applications with interlocutory application are, therefore, dismissed.

**(Rajeev Ranjan Prasad, J)**

Arvind/-

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| AFR/NAFR          | AFR        |
| CA V DATE         | 04.10.2018 |
| Uploading Date    | 05.10.2018 |
| Transmission Date | 05.10.2018 |

