

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21730 of 2016

Arising Out of PS. Case No.-104 Year-2014 Thana- NAVINAGAR District- Aurangabad

Lalit Singh @ Lalit Narain Singh @ Lalit Kishore Singh, Son of Late Yogeshwar Narain Singh, resident of Village + PO Chandragarh, P.S. Nabinagar, District Aurangabad

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate
For the Opposite Party/s : Mr. Rajendra Pd. Nat, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 19-09-2019

Heard the parties.

2. Petitioner has sought for quashment of the order of cognizance dated 01.03.2015 passed by the learned Additional Chief Judicial Magistrate, Aurangabad in Nabinagar P.S. Case No. 104 of 2014 whereby cognizance has been taken for offences under Section 379 of the Indian Penal Code and Rule 4 read with Rule 40 of the Bihar Minor Mineral Concession Rules, 1972.

3. Allegation in the FIR is that four named persons including the petitioner were allegedly involved in illegal mining of stones from their respective field and were also indulged in sale of sand in unauthorized manner inasmuch as without licence.

4. Contention is that none of the witnesses of the occurrence stated before the police that the petitioner was indulged



in such activity. All the witnesses stated that the petitioner had cut soil from his field for the purpose of construction of his college building. Moreover, there is no mention of any plot number etc. from which illegal mining was allegedly done nor any witness has stated that petitioner was ever seen indulged in mining and sale of minerals. Therefore, apparently, there is no offence disclosed against the petitioner. Hence, criminal prosecution of the petitioner is an abuse of the process of the Court. Moreover, the allegation of theft, under Section 379 of the Indian Penal Code, is not made out against the petitioner in view of the allegations made herein.

5. On careful consideration of the material in the case diary, I find substance in the submission of learned counsel for the petitioner that no witness has supported the allegation that the petitioner was ever seen mining or selling the mineral to anyone nor there is allegation of theft in absence of any averment of dishonest removal of property of some other person by the petitioner.

6. Rules 4 and 40 of the Bihar Minor Mineral Concession Rules, 1972 read as follows:-

“4. Prohibition of mining operation without permit or mining lease. - (1) No person shall undertake any mining operation in any area, except under and in accordance with the terms and conditions of a quarrying



permit or, as the case may be, a mining lease [or settlement], granted under these Rules:

Provided that nothing in this sub-rule shall affect any mining or quarrying operations undertaken in any area in accordance with the terms and conditions of a mining lease [or settlement] or quarrying permit granted before the commencement of these rules which is in force at the time of such commencement.

(2) No quarrying permit or mining lease [or settlement] shall be granted otherwise than in accordance with the provisions of these Rules.

40. Penalty for unauthorised extraction and removal of minor minerals. - [(1)

Whoever is found to be extracting or removing minor minerals or on whose behalf such extraction or removal is being made he be an agent, a manager, an employee or a contractor or a sub-lessee, otherwise than in accordance with these Rules, shall be presumed to be party to the illegal removal of the minor mineral and every such person shall be punishable with simple imprisonment which may extend to six months or with fine, which may extend to rupees five thousand or with both.]

(2) Whenever any person is found extracting or removing or transporting minor minerals in contravention of the provisions of these rules, the 3/5 [Competent Officer or Deputy Director (Mines) or Additional Director (Mines) or Director of Mines] may seize the



minor minerals together with all tools and equipments used in committing such offence.

(3) The [Competent Officer or Deputy Director (Mines) or Additional Director (Mines) or Director of Mines] who has seized the minor minerals or the tools and equipments under sub-rule (2), may release the same on the execution by the claimant thereof of a bond for the production of the property so released, if and when so required before the Court having jurisdiction to try the offence on account of which the seizure has been made.

(4) The [Competent Officer or Deputy Director (Mines) or Additional Director (Mines) or Director of Mines] may, without orders from a Magistrate, and without a warrant, arrest any person who is found extracting or removing or transporting minor minerals in contravention of these rules.”

7. Since, there is no material to substantiate that the petitioner was found extracting or removing minerals, there is no question of having a permit or not, for the purpose. The Circle Officer, Nabinagar, who is informant of this case, is not a competent officer to initiate prosecution, rather he had addressed to the District Mining Officer, Aurangabad which is basis of the present first information report.

8. In view of the lack of material and serious infirmities noticed above, the criminal prosecution of the petitioner is an



abuse of the process of the Court. Hence, the impugned order and the entire criminal prosecution stands hereby quashed against the petitioner and this application is allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	23.09.2019
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