

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55793 of 2016

Arising Out of PS. Case No.-313 Year-2016 Thana- GOVERNMENT OFFICIAL COMP.
District- Nawada

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1. Rajendra Modi
2. Surendra Modi, Both are sons of Late Rameshwar Modi, resident of Village Jhumri Telaiya, PO and PS - Telaiya, District - Kodarma Jharkhand
- Petitioner/s
- Versus
1. The State of Bihar through the Secretary, Department of Forest & Environment, Government of Bihar
2. Divisional Forest Officer, Rajauli West, District - Nawada.
- Opposite Party/s
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Appearance :

For the Petitioner/s	:	Mr. Umesh Prasad Singh, Sr. Advocate Mr. Rakesh Kumar, Advocate Mr. Abhimanyu Vatsa, Advocate Mr. Nilanjan Chatterjee, Advocate Ms. Priti Jaiswal, Advocate
For the State	:	Mr. Shyam Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 28-08-2019

Heard the parties.

2. Petitioners are partners of a registered Partnership Firm known as M/s Sharda Mica Mining Company. The Firm is registered under the Partnership Act. The Firm entered into a mining lease agreement with the State Government through the Governor of Bihar on 5th March, 1986, a copy at Annexure-2. The lease was for a term of twenty years. Thereafter, the Firm was served with a notice dated 15.11.2016 from the Joint Secretary-cum-Director, Department of Mines & Geology, Government of Bihar, Patna whereby the Firm was intimated that application of



the Firm for renewal of the mining lease had been rejected. The Firm M/s Sharda Mica Mining Company challenged the aforesaid order in C.W.J.C. No. 1161 of 2017 and by order dated 28.02.2019, the said order was set aside and the authorities were directed to pass order according to law.

3. According to the present prosecution report on 23.06.2016, the authorities inspected the mines premise of M/s Sharda Mica Mining Company and found that illegal mining of Mica was going on thereat. Mica and other tools used for the purpose as well as the labours employed in mining were arrested. The entire exercise aforesaid was done on 23.06.2016 i.e. prior to intimation of refusal of renewal of the lease by letter dated 15.11.2016.

4. Hence, submission of learned Sr. Counsel for the petitioners is that on the date of search lease for mining of Mica was already there, as such, criminal prosecution is abuse of the process of the Court. Moreover, the Firm is not an accused in the case, hence, vicarious liability on the partners cannot be alleged in absence of the Firm. Even when the Firm would have an accused in the case, the specific act done by the individual Director or partner disclosing commission of criminal offence must be there to



put the individual partner on trial which is completely lacking in this case.

5. Submission is that the petitioners have challenged the order of cognizance dated 02.11.2016 passed in G.O. Case No. 313 of 2016 whereby cognizance has been taken for the offences under Sections 26, 41 and 42 of the Indian Forest Act, 1927 whereas none of the aforesaid offences are prima facie made out in this case.

6. Learned counsel for the State opposed the prayer, however, does not dispute the factual position of the case narrated above.

7. The Hon'ble Supreme Court in a catena of cases held that unless the company is an accused, a Director of the Company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. Reference may be made to **S.K. Alagh vs. State of U.P. & Ors** reported in **2008(5)SCC 662**.

8. Since M/s Sharda Mica Mining Company is not an accused and there is no specific allegation against any of the petitioners that they have committed any offence, criminal prosecution of the petitioners is out right an abuse of the process of the Court. Moreover, on the date of alleged violation of mining laws, a valid agreement between the State of Bihar and the Firm of the petitioners was already there. Prayer for renewal of mining



lease was refused only on 15.11.2016. A careful perusal of the provisions of Section 26 of the Indian Forest Act, it is evident that none of the Act enumerated therein is alleged to have been committed by the petitioners. Section 41 of the Indian Forest Act thereof is rule making power and Section 42 of the Indian Forest Act relates to punishment of violation of the rules.

9. Apparently, none of the ingredients of offences alleged are attracted in the facts and circumstances of this case. Hence, the impugned order is not sustainable for this reason also.

10. Considering the aforesaid findings, the impugned order and the entire criminal proceeding against the petitioners is hereby quashed and this application is allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	03.09.2019
Transmission Date	03.09.2019

