

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.895 of 2016

Arising Out of PS. Case No.-25 Year-2016 Thana- PATORI District- Samastipur

=====

Santosh Kumar Sharma son of Shri Paltan Sharma, resident of village-
Rajpur, P.O.- Jaunapur, P.S.- Shahpur Patory, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary Home, Bihar, Patna.
2. The Director Mining, Bihar, Patna.
3. The Principal Secretary, Bihar State Pollution Control Board, Patna.
4. The District Magistrate, District- Samastipur.
5. The Superintendent of Police, District- Samastipur.
6. The District Mining Officer, Samastipur.
7. The Assistant Mining Officer, District- Samastipur.
8. The S.H.O. Police Station, Patory, District- Samastipur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar Singh, Advocate
For the Respondent/s	:	Mr. Md. Nashrul Hoda Khan, SC-1

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 03-01-2019

Heard learned counsel for the petitioner, learned counsel
for the State, learned counsel for the Mines Department and
learned counsel for the Bihar State Pollution Control Board.

2. In the present application preferred under Articles
226 and 227 of the Constitution of India, the petitioner has prayed
for quashing the first information report (for short 'FIR') of Patory
P.S. Case No. 25 of 2016, as contained in Annexure-7, registered
under Rule-4, 26A and 40(1) of the Bihar Minor Mineral
concession Rules, 1972 (for short ' the Rules of 1972').

3. Learned counsel appearing for the petitioner
submitted that the FIR instituted against the petitioner is bad in



law, in view of the fact that the Officer-in-Charge of a police station does not have any authority to institute a case under the provisions of Rules of 1972. Referring to the provisions prescribed under Rules 4, 26A, 40(1) and 41 of the Rules of 1972, he submitted that only a complaint and not an FIR would be maintainable in respect of any violation of any of the provisions of the Rules of 1972.

4. On the other hand, learned counsel for the mining department submitted that the institution of an FIR in respect of violation of the provisions of the Rules of 1972 is not barred. He contended that there is specific allegation in the FIR that the petitioner was running a brick kiln without obtaining mining lease and paying royalty to the State.

5. Learned counsel for the State and learned counsel for the Pollution Control Board have adopted the submissions made by the learned counsel for the mining department.

6. In view of the submissions made at the Bar, firstly, it would be relevant to refer to the provisions of Rule 4, 26A, 40(1) and 41 of the Rules of 1972, which read as under:-

“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.

26A. Consolidation of royalty on brick earth.-

Notwithstanding anything contained in these rules, the State Government shall by notification in the Official Gazette determine a consolidated amount of royalty which may be revised once in three years, to be paid by the brick kiln owner/brick earth remover per kiln per annum to the State Government in a manner prescribed therein on a fixed number of bricks for every classified area:

Provided that the State Government may for the purposes of determining the consolidated amount of royalty to be so paid classify the places into different categories taking such facts into account which the State Government think proper:



Provided further that if the brick earth remover/brick kiln owner fails to make payment of the consolidated amount of royalty in the manner so prescribed, he shall not be allowed to carry on the business and the competent officer or any other officer duly authorised in this behalf by the State Government, shall be competent to stop such business.

Explanation. - For the purpose of this rule-

(i) Business means and includes laying, burning or selling of bricks by brick earth remover/brick kiln owner and such other activities as are associated with manufacturing of bricks.

(ii) For the purpose of this rule brick, earth remover means and includes person or persons by whom or on whose behalf the brick earth is removed for manufacturing bricks.

(iii) For the purpose of this rule brick kiln owner means a person who owns the brick kiln or on whose behalf bricks are manufactured in that kiln and includes manager, agent and lessee of such person.]

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.

41. Offence cognizable upon written complaints. - No Court inferior to that of a Magistrate of the First Class shall try any offence punishable under these rules and no Court shall take cognizance of any offence under these rules, except upon a complaint made in writing by the Competent Officer or Deputy Director of Mines or Additional Director of Mines or Director of Mines or any other officer empowered by the Government,”

7. From a reading of the afore-stated provisions of the Rules of the 1972, it would be manifest that Rule-4 of the Rules are regulatory in nature. It prohibits a person from undertaking any mining operation in any area except 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 the Rules.

8. Rule 26A of the Rules enables the State Government to determine a consolidated amount of royalty which may be revised once in three years to be paid by the brick kiln owner/brick



earth remover per kiln per annum to the State Government in a manner prescribed therein on a fixed number of bricks for every classified area.

9. The only penal provision in the Rules of 1972 under which the FIR has been instituted is Rule 40. Sub-rule (1) of Rule 40 provides that 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 a sub-lessee, otherwise than in accordance with the 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.

10. From a perusal of Rule 41 it would be manifest that no prosecution for an offence under the Rules of 1972 can be launched without a written complaint.

11. In other words, it bars the court from taking cognizance of the offence under the provisions of the Rules of 1972, unless a complaint is made in writing to the court by a competent officer empowered by the Government.

12. It is well known that once an FIR is instituted and investigation is conducted, the same culminates into submission of



a police report under Section 173(2) of the Code of Criminal Procedure before the Court pursuant to which the court takes cognizance of the offence. However, a police report cannot be made a basis for the court to take cognizance of an offence under the provisions of the Rules of 1972.

13. In that view of the matter, the impugned FIR instituted against the petitioner under Rules 4, 26A and 40(1) of the Rules of 1972 cannot be sustained. Accordingly, the FIR of Patory P.S. Case No.25 of 2016 is set aside.

14. The writ petition stands allowed.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.01.2019
Transmission Date	11.01.2019

