

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 1460 of 2020**

1. Rakesh Sharma S/o Lt. Jagdeesh Prasad, Aged about 55 years, R/o Gjanandpuram, P.S. City Kotwali Distt. Raigarh, Chhattisgarh.
2. Raju Kumar Sidar S/o Devsingh Sidar, Aged about 25 years, R/o Mudhpara, P.S. Hasoud, Distt. Janjgir-Champa, Chhattisgarh.
3. Harish Kumar S/o Lakshmi Prasad, Aged about 32 years, R/o Mudhpara, P.S. Shivrinarayan, Distt. Janjgir-Champa, Chhattisgarh.
4. Achhelal S/o Dashmee Paal, Aged about 38 years, R/o Baradeeh, P.S. Chunar, Distt. Mirjapur, Uttar Pradesh.
5. Phoolchand Mahto S/o Lalit Mahto, Aged about 45 years, R/o Sirsee, P.S. Echka, Distt. Hajaribag, Jharkhand.

---Petitioners**Versus**

State of Chhattisgarh, Through Station House Officer, Police Station Basantpur, Distt. Balrampur, Chhattisgarh.

--- Respondent

For Petitioners :- Mr. Awadh Tripathi, Advocate
For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**

25/03/2021

1. The five petitioners herein seek quashment of FIR No. 125/2020 registered against them at Police Station Basantpur, Distt. Balrampur and the criminal case No. 245/2020 pending before the Judicial Magistrate First Class, Wadrafnagar, Distt. Balrampur for offence punishable under Sections 420, 120B read with Section 34 of IPC and Section 21 of Mines and Minerals (Development and Regulation) Act, 1957, on the following factual backdrop :-

1.1. Petitioner No. 1 is the owner of registered proprietorship firm named as M/s Shree Mangal and is involved in coal trading both inter-state as well as intra-state and petitioners No. 2 to 5 are drivers of the trucks owned by the firm of petitioner No. 1.

1.2. It is the case of petitioner No. 1 that he had purchased coal from SECL through Spot-e-Auction and on 09/07/2020, he had obtained Delivery Order bearing No. 072020/5601/02383 for transportation of 3000 tons of coal and the areas where he was entitled to take the coal were Bilha, Hardi and Dhanwar.

1.3. On 21/08/2020, four trucks owned by petitioner No. 1 and driven by petitioners No. 2 to 5, transporting the coal purchased by petitioner No. 1 from SECL through Spot-e-Auction pursuant to Delivery Order No. 072020/5601/02383 obtained by him, were seized by the respondent/police alleging that the trucks were illegally carrying coal to Chandasi Mandi, Uttar Pradesh and offences punishable under Sections 420, 120B read with Section 34 of IPC as well as Section 21 of Mines and Minerals (Development and Regulation) Act, 1957 were registered against the petitioners.

2. Mr. Awadh Tripathi, learned counsel for the petitioners, would submit that petitioner No. 1 had legally purchased coal from SECL through Spot-e-Auction and on 09/07/2020, he had also obtained Delivery Order No. 072020/5601/02383 from SECL for transporting the coal to Bilha, Hardi and Dhanwar and the same was also duly informed by the SECL to the S.H.O. vide the document filed at page 77 of the writ petition which is also a part of the charge-sheet, as such, no offence under Section 420 and 420-B of IPC is made out against the petitioners. He

would further submit that no cognizance can be taken against the petitioners for offence punishable under Section 21 of Mines and Minerals (Development and Regulation) Act, 1957 on the basis of the police report as in view of the provisions contained under Section 22 of the Act of 1957, only the Magistrate having jurisdiction is empowered to take cognizance of the said offence in respect of violation of various provisions of the Act of 1957 and the Rules made thereunder. He would rely upon the decision rendered by the Supreme Court in the matter of Jayant v. The State of Madhya Pradesh¹ and submit that the FIR registered against the petitioners as well as the subsequent criminal case pending against them deserves to be quashed.

3. Mr. Ravi Bhagat, learned State counsel, would submit that it is not a case of quashing the charges and charge-sheet as prima facie on behalf of petitioner No. 1, petitioners No. 2 to 5 were trying to take coal in the trucks owned by petitioner No. 1 to Chandasi Mandi, Uttar Pradesh for illegal purpose whereas the coal ought to have been used in the State of

¹ AIR 2021 SC 496

Chhattisgarh as per the Delivery Order dated 09/07/2020 issued by SECL, as such, the instant petition deserves to be dismissed.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

5. At the outset, it would be appropriate to notice the decision rendered by the Supreme Court in the matter of **State of Haryana v. Bhajan Lal**² in which Their Lordships of the Supreme Court have laid down the principle of law for exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and/or inherent power under Section 482 of CrPC and have laid down the categories of cases by way of illustration wherein the said power can be exercised by this Court either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. Paragraph 102 of the judgment states as under :-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the

² 1992 Supp. (1) SCC 335

extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myraid kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do no prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5). Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6). Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7). Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

6. Having noticed the inherent power exercised under Section 482 of CrPC, it would be expedient to revert to the facts of the present case. Admittedly, four trucks containing coal owned by petitioner No. 1 and driven by petitioners No. 2 to 5 were seized at Dhanwar border, District Balrampur and accordingly, offences under Section 420 and 120B read with Section 34 of IPC and Section 21 of Mines and Minerals (Development and Regulation) Act, 1957 were registered against them. Upon seizure, the S.H.O. of Police Station Basantpur, Distt. Balrampur sought information about coal from SECL and the reply submitted by SECL on 07/09/2020 to the query made by the S.H.O. states as under :-

प्रति,
थाना प्रभारी
थाना बसंतपुर,
जिला – बलरामपुर – रामानुजगंज (छ.ग.)

विषय:- श्रीमंगल के द्वारा कोयले के उठाव के संबंध में ।

महोदय,

- मेसर्स श्रीमंगल को एसईसीएल दीपका से अप्रैल 2019 से आज तक एसईसीएल मुख्यालय बिलासपुर से निम्नलिखित डी.ओ. प्राप्त हुए हैं जिनका विवरण निम्न है ।

क्र.	डी.ओ. नं. एवं दिनांक	डी.ओ. की मात्रा	एफ एस ए / ई ऑक्शन	राज्य के अंदर/ राज्य के बाहर	गंतव्य स्थान
1	00226 दि. 15.04.20	1000.00 टन	ई ऑक्शन	राज्य के बाहर	(1) चंदासी मुगलसराय (यू.पी.) (2) वैशाली बिहार
2.	00319 दि. 21.04.20	1000.00 टन	ई ऑक्शन	राज्य के बाहर	(1) चंदासी मुगलसराय (यू.पी.) (2) गुमना झारखंड
3	03078 दि. 07.08.20	2000.00 टन	ई ऑक्शन	राज्य के बाहर	(1) चंदासी मुगलसराय (यू.पी.) (2) वैशाली बिहार
4	02383 दि. 09.07.20	3000.00 टन	ई ऑक्शन	राज्य के अंदर	(1) बिल्हा बिलासपुर (छ.ग.) (2) धनवार (छ.ग.) (3) हरदी बिलासपुर (छ.ग.)

- उत्तर एक में दर्शाए अनुसार सभी डी.ओ. ऑक्शन के प्राप्त हुए हैं ।
- श्रीमंगल के द्वारा रोड के माध्यम से उत्तर एक में दर्शाए अनुसार गंतव्य स्थानों को कोयला दिया गया है ।
- श्रीमंगल को डी.ओ. ई आक्शन के तहत G 11 ग्रेड कोयले के लिए प्राप्त हुआ है ।
- उक्त डी.ओ. छत्तीसगढ़ राज्य के लिए था । उत्तर एक में सभी डी.ओ. के राज्य दर्शाए गये हैं ।
- गंतव्य स्थान धनवार दर्शाए हुए उपरोक्त डी.ओ. नं. 2383 दिनांक 09.07.20 के अंतर्गत कुल 29 ई-ट्रांजिट पास जारी हुआ है जिसका विवरण साथ में संलग्न है ।
- श्रीमंगल को दिनांक 19.08.20 को जारी किया हुआ टी.पी. पास की मूल कापी संलग्न है ।
- श्रीमंगल को दिनांक 19.08.20 को जारी किया हुआ डिलीवरी चालान की मूल कापी संलग्न है ।

सही/-

07/09/20

क्षेत्रीय विक्रया प्रबन्धक

एसईसीएल: दीपका क्षेत्र

7. A careful perusal of the aforesaid information would show that so far as item No. 4 is concerned, petitioner No. 1 had obtained Delivery Order No. 02383 dated 09/07/2020 from SECL for 3,000 tonnes of coal and the places where he was entitled to take the said coal are mentioned as Bilha, Dhanwar and Hardi, all of them within the State of Chhattisgarh. Admittedly, the coal in question was seized by the Police at Dhanwar border, District Balrampur. Though there is an allegation that the coal was being taken to Chandasi Mandi, Uttar Pradesh, but there is no evidence on record to show that it was indeed being taken to the State of Uttar Pradesh for illegal purposes. It is pertinent to mention here that the firm Shree Mangal owned by petitioner No. 1 was also granted delivery order of coal by SECL for carrying the said coal to Chandasi, Mugalsaray, (U.P.) which is apparent from memo dated 07/09/2020 issued by SECL to S.H.O. of Police Station Basantpur, Distt. Balrampur.

8. It is the case of the respondent/State that the coal in question was likely to be taken to the State of Uttar Pradesh for illegal purposes without authority of law, but it could not be taken there as it had been seized by the Police at Dhanwar border and on the prosecution's own showing by the document issued by SECL on 07/09/2020 (filed at Page 77 of the petition), petitioner No. 1 was fully entitled to take the auctioned coal to Dhanwar pursuant to Delivery Order No. 02383 obtained by petitioner No. 1 on 09/07/2020 from SECL. Therefore, merely on the basis of apprehension that petitioners could have taken coal to the State of Uttar Pradesh whereas it was already seized by the Police at Dhanwar within the territory of State of Chhattisgarh, for which petitioner No. 1 was fully entitled to, it cannot be held that petitioners No. 2 to 5 were transporting coal in the trucks owned by petitioner No. 1 to the State of Uttar Pradesh for illegal purpose. As such, no offence under Section 420 of IPC is made out against the petitioners on the basis of mere apprehension that they were carrying coal to the State of Uttar Pradesh which was

admittedly owned by petitioner No. 1 on the date of alleged offence.

9. Section 415 of IPC defines cheating whereas Section 420 of IPC defines Cheating and dishonestly inducing delivery of property.

Section 415 of IPC states as under :-

"415. Cheating. - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, any which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

Section 420 of IPC states as under :-

"420. Cheating and dishonestly inducing delivery of property. - Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. "

10. The submission of learned State counsel, that at Dhanwar, District Balrampur, there is neither any plant nor any coal site where the coal could have taken by the petitioners or utilized by them, is not at all a ground to hold that

petitioners have committed offence punishable under Section 420 of IPC. The petitioners, having permission to carry coal to Dhanwar, District Balrampur, cannot be booked for offence under Section 420 of IPC. The respondent/State in order to book the present petitioners for the aforesaid offences ought to have bring out the ingredients of the offence in accordance with law and the petitioners just cannot be booked for criminal offence on the basis of apprehension or on the basis that it is impossible to consume the coal at a place like Dhanwar where it was taken and seized.

11. On the basis of the above-stated analysis, I am of the considered view that taking the contents of the FIR as a whole, no offence under Section 420 of IPC is made out against the petitioners particularly when it is admitted position on record that the coal seized was owned by petitioner No. 1 who purchased it through Spot-e-Auction from SECL and he was authorized to transport the said coal to Dhanwar, Chhattisgarh where the coal was seized by the Police. As such, no offence of cheating

under Section 420/120B of IPC could have been registered against the petitioners.

12. Now, coming to the next offence that petitioners have been charge-sheet for i.e. offence under Section 21 of Mines and Minerals (Development and Regulation) Act, 1957, which states as under :-

"21. Penalties. - [(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

[(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.]

[(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

[(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle

or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.]

[(4A) Any mineral, tool, equipment, vehicle, or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.]

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.]

[(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.]

13. However, Section 22 of Mines and Minerals (Development and Regulation) Act, 1957 provides the procedure for taking cognizance, which states as under :-

"22. Cognizance of offences. - No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government of the State Government."

14. Applying the provisions contained under Section 21 of the Act of 1957 to the facts of the

present case, it is quite vivid that Section 21 is not attracted in the present case at all as admittedly, Delivery Order No. 02383 dated 09/07/2020 was already issued by SECL in favour of petitioner No. 1 qua 3,000 tonnes of coal purchased by him through Spot-e-Auction and he was entitled to lift the coal from SECL mines and transport it to Bilha, Dhanwar and Hardi. The coal in question was seized by the Police at Dhanwar, as such, the provisions of Section 21 of the Act is not attracted in the present case and no offence can be said to have been committed by the petitioners under Section 21 of the Act of 1957.

15. At this stage, it would be appropriate to notice the decision rendered by the Supreme Court in the matter of Jayant (supra) wherein Their Lordships of the Supreme Court have clearly laid down the principle of law for taking cognizance of offence under Section 21 of Mines and Minerals (Development and Regulation) Act, 1957. Paragraph 13 of the judgment states as under :-

“13. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis-a-vis the Code of Criminal Procedure and the

Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

i) that the learned Magistrate can in exercise of powers Under Section 156(3) of the Code order/direct the concerned In-charge/SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

iii) for commission of the offence under the Indian Penal Code, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned In-charge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In-charge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the

learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

v) in a case where the violator is permitted to compound the offences on payment of penalty as per Sub-section 1 of Section 23A, considering Sub-section 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under Sub-section 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 Indian Penal Code and the same shall be proceeded with further."

16. In the instant case, cognizance has already been taken and the case was fixed for charges on 22/10/2020, as such, on the basis of the aforesaid discussion, FIR No. 125/2020 registered against the petitioners at Police Station Basantpur, Distt. Balrampur and the criminal case No. 245/2020 pending before the Judicial Magistrate First Class, Wadrafnagar, Distt. Balrampur for offence punishable under Sections 420, 120B read with Section 34 of IPC and Section 21 of Mines and Minerals (Development and Regulation) Act, 1957 is hereby

quashed and petitioners are acquitted of all the charges.

17. With the aforesaid observation, the instant petition is allowed. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet