

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1233 of 2021

Arising Out of PS. Case No.-407 Year-2021 Thana- DEHRI TOWN District- Rohtas

M/s. Aditya Multicom Private Limited, A company incorporated under the provisions of the Companies Act. 1956 having its registered office at 12, Waterloo Street, 2nd Floor, Kolkata - 700069, Through its Chief Executive Officer, Sadashiv Prasad Singh, Aged about 58 years (male), Son of Maleshwar Singh, Resident of 410, Ganeshalay Apartment, Jharudih, Near Carmel School, Matkuria, Dhanbad - Jharkhand, 826001

... .. Petitioner/s

Versus

1. The State of Bihar, Through Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
3. The Director General of Police, Bihar, Old Secretariat, Patna. Bihar
4. The Superintendent of Police, Rohtas. Bihar
5. The Officer In Charge, Dehri (Town) Police Station, Rohtas Bihar
6. The Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna, Bihar.
7. The Assistant Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna, Bihar
8. The District Magistrate cum Collector, Rohtas. Bihar
9. The Mines Inspector, District Mining Office, Rohtas. Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Adv.
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA 7
		Mr. Sajal Krishna A.C. to GA 7

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

5 07-04-2022 Heard learned counsel for the petitioner, learned counsel for the respondent nos. 6 to 9 and learned counsel for the State.

The petitioner has filed the instant application for the following reliefs:



- “i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Dehri(Town) P.S. Case No.407 of 2021 registered on 03.08.2021 for alleged offences under section 379, 411, 420 and 409 of the Indian Penal Code and Rule 39(2), 39(3) and 56(2) of the Bihar Mineral (Concession, Prevention of illegal Mining, Transportation & Storage) Rules, 2019 on the ground that the same is completely illegal and without any authority of law.*
- ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1st Set not to take any coercive steps against the Petitioner in pursuance of Dehri (Town) P.S. Case no.407 of 2021.*
- iii) This Hon’ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.*
- iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.*
- v) To grant/award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.”*



Having heard learned counsel for the parties, the Court is not going into the details of the case of the parties in view of the fact that there is no dispute that the present case is fully covered by the judgment in the case of Mithilesh Kumar Singh versus State of Bihar [2019(6) BLJ 149]. Relevant paragraphs of the judgment in the case of Mithilesh Kumar Singh (supra) is being quoted hereinbelow for ready reference:

“33. Section 22 of the MMDR Act reads 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 or the State Government."

34. A similar provision is contained under Rule 41 of the Rules of 1972, which reads as under :-

"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".

35. In the instant case, the FIR has been registered by the Mines Inspector contrary to the requirements of Section 22 of the MMDR Act and Rule 41 of the 1972 Rules.

36. For the offence alleging violation of any provisions of the MMDR Act or any rules made thereunder, an FIR cannot be instituted rather a complaint in writing has to be made by a person authorized in this behalf.

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43. In State (NCT of Delhi) Vs. Sanjay (Supra), the Supreme Court observed as under :-

"71. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Section 378 and 793 of the Indian Penal Code.

72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable



under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure."

(emphasis mine)

43. Thus, it would be evident from the ratio laid down by the Supreme Court in State (NCT of Delhi) Vs. Sanjay (Supra), that in case a person without any lease or licence or any authority extracts minerals in a clandestine manner with an intent to remove dishonestly from the possession of the State, the ingredients of the



offence punishable under Section 379 of the IPC would be attracted. But, if the person having valid licence or lease or authority excavates minerals in excess of the quantity for which permission is granted, it cannot be said that the ingredients of the offence punishable under Section 379 of the IPC is attracted.

44. In so far as the offences under Section 406 and 420 of the IPC are concerned, since the petitioner is a valid licensee, it cannot be said that there was an intention to cheat right from the beginning. The petitioner was filing his returns and on the basis of returns filed by him, the informant came to know that the Company had excavated sand in excess to the permissible limit. Thus, in absence of any mens rea as also any dishonest intention to cheat right from the beginning, the ingredients of the offences punishable under Section 406 and 420 of the IPC would also not be attracted.

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54. Since the present FIR is against express legal bar created by the MMDR Act, 1972 Rules and the 1986 Rules and none of the ingredients of the offences under the Indian Penal Code are attracted, in the opinion of this Court, allowing the prosecutions to continue would amount to an abuse of the process of the court.



55. Accordingly, the writ petitions are allowed. The FIRs of Sigaudi P.S. Case No. 02 of 2018, Bhagwanganj P.S. Case No. 02 of 2018, Dhanarua P.S. Case No. 07 of 2018 and Naubatpur P.S. Case No. 07 of 2018 are hereby quashed.

56. It is made clear that this Court has not adjudicated upon the issue of civil liability arising out of excess mining of sand by the petitioner. Any of the observations made in these cases would have no consequence in any proceedings, which may arise between the parties in respect of civil liability.”

Learned counsel for the petitioner relies on Rule 61 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 which is quoted hereinbelow for ready reference:

“61. Offences 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 written complaint made in writing by the Competent Officer or Dy. Director of Mines or Additional Director of Mines or Director of Mines or any other officer empowered by the Government.”



Thus taking into consideration the ratio of the judgment in the case of Mithilesh Kumar Singh (supra) read with Rule 61 of the Bihar Mineral Rules, 2019, no FIR could be instituted rather complaint in writing will have to be made by the competent officer or Deputy Director of Mines, Additional Director of Mines or Director of Mines or any other officer empowered by the Government.

It is also not in dispute that the petitioner was a valid licensee and the allegation against the petitioner is not of having removed the stock without issuing challan.

Thus in view of the facts of the case there being no doubt about the legal position that no FIR could have been instituted in view of Rule 61 of the Bihar Mineral Rules, 2019 together with the ratio of the judgment in the case of Mithilesh Kumar Singh (supra), the writ petition is allowed and the FIR being Dehri Town (Dalmiyanagar O.P.) P.S. Case no. 407 of 2021 is hereby quashed.

It goes without saying that in terms of the paragraph no.56 of the judgment in the case of Mithilesh Kumar Singh (supra) as quoted hereinabove, the Court in the instant case also has not adjudicated upon issue of civil liability arising out of the facts of the instant case.



Any observations made in the instant case would have no consequence in any proceeding which may arise between the parties in respect to the civil liability.

The application stands allowed.

(Partha Sarthy, J)

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