

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3119 of 2011

Prabin Bihari Lal.

.... ***Petitioner***
Mr. Debasis Das, Advocate

-versus-

State of Orissa.

.... ***Opposite Party***
Addl. Standing Counsel - For the O.P.-State

CRLMC No.3120 of 2011

Prabin Bihari Lal.

.... ***Petitioner***
Mr. Debasis Das, Advocate

-versus-

State of Orissa.

.... ***Opposite Party***
Addl. Standing Counsel - For the O.P.-State

CRLMC No.3451 of 2011

Prabin Bihari Lal.

.... ***Petitioner***
Mr. Debasis Das, Advocate

-versus-

State of Orissa.

.... ***Opposite Party***
Addl. Standing Counsel - For the O.P.-State

CRLMC No.3452 of 2011

Gopal Barik.

.... ***Petitioner***
Mr. Debasis Das, Advocate

-versus-

State of Orissa.

.... ***Opposite Party***
Addl. Standing Counsel - For the O.P.-State

**CORAM:
JUSTICE S. PUJAHARI**

ORDER

13.09.2022

Order
No.

12.

1. Since the issue involved is common to all these four CRLMCs, all of them have been heard together, and the common order to follow shall dispose of them.

2. Petitioner – Prabin Bihari Lal is facing prosecution under Section 27(3)(a)(c) of the Orissa Forest Act (for short the “O.F. Act”) and under Section 2(i)(ii) of the Orissa Forest Conservation Act (for short the “O.F.C. Act”) in three cases bearing 2(b) C.C. Nos.11 of 2009, 12 of 2009 and 13 of 2009 in the court of the learned J.M.F.C., Barbil pursuant to the impugned order of cognizance dated 25.11.2009 passed separately in all those three cases, and the petitioner – Gopal

Barik is facing prosecution for the same offences in 2(b) C.C. No.14 of 2009 pursuant to the order dated 25.11.2009 passed by the same Court. The petitioners have approached this Court under Section 482 of Cr.P.C. seeking for quashing of the orders of cognizance passed by the learned J.M.F.C., Barbil as well as the consequential proceedings.

3. Heard the learned counsel for the petitioners and the learned Addl. Standing counsel appearing for the State.

4. The petitioners are the employees of the Partnership Firm – M/s. Arjun Ladha in Balagundi Iron & Manganese Mines at Barbil in the district of Keonjhar and the common allegation against them vide the aforesaid cases is that they cleared the forest growth for mining purposes in Karo Reserved Forest without having forest clearance and also made illegal fresh breaking of forest land. It is, however, the contention of the learned counsel appearing for the petitioners that the forest area in question had been demarcated by a

Joint Verification Team on 05.06.2004 and necessary forest clearance had been obtained from the Ministry of Forest Environment. It is further contended that the Central Government had also granted TWP in favour of the lessee in the broken up area measuring 48.773 hectares of Reserved forest, and the present prosecutions have been launched much after the Joint Verification Report of 2009. It is further submitted that on the basis of the very same allegations as revealed from the Joint Verification Report of 2009, the lease was determined under the provisions of Rule-27(5) of the Mineral Concessions Rules, and the said order of determination on being challenged by the lessee in a revision before the Central Government under Rule-54 of the said Rules, was set-aside by the Central Government with the findings, inter-alia, that the Joint Verification Report of 2004 was a genuine one, and the Joint Verification Report of 2009 was clouded, biased and prejudicial. It was further held by the Revisional Authority that the finding regarding the broken up area was an outcome of application of erroneous method of

calculation of size of pit/blocks, and that the allegation of expansion of road without permission of the Forest Authorities was not true, inasmuch as no new road had been constructed by the lessee and that the road that was existing prior to 1980 was only maintained. It is further submitted by the learned counsel for the petitioner that the decision of the Revisional Forum was challenged by the State Government in W.P.(C) No.9702 of 2012 before this Court and the same was ultimately dismissed. It is thus the submission of the learned counsel for the petitioners that in view of the judgment of the Central Government, the prosecutions launched against the petitioners on the basis of the Joint Verification Report, 2009 are not sustainable, for which the impugned orders as well as the proceedings before the Court below need to be interfered with by this Court.

5. Per contra, the learned Addl. Standing counsel appearing for the State submits that the impugned orders do not call for any interference by this Court, inasmuch as the learned J.M.F.C., Barbil has passed

those orders on taking a prima-facie view on the basis of the materials placed before him at that stage. It is his further submission that the Joint Verification Report dated 31.10.2009 which is emphasized by the petitioners, has no nexus with the present prosecutions, inasmuch as it is the specific allegation that the petitioners have cleared the forest growth for raising of Ore in broken area and stacking of the same outside the broken area in Block No.2 inside the Karo Reserve Forest, without having forest clearance. The learned counsel also invites a reference to the action taken by the Forest Guard, Balani Beat regarding seizure.

6. Needless to mention that at the stage of taking cognizance, the Magistrate is not required to undertake any roving enquiry regarding commission of offence by the accused persons, and what all that is necessary for him is to take a prima-facie view regarding involvement of the accused persons in the offences alleged. At that stage, the Court is also not required to apply his mind to the possible defence plea of the accused persons in

juxtaposition with the materials placed by the prosecution at the threshold of the proceeding. The petitioners, what it appears, urge this Court at this stage to delve into the question of maintainability of the proceedings on the basis of the order of the Revisional Forum which may be their defence plea in the cases. Needless to mention that the accused-petitioners are well within their right to agitate the questions pertaining to their defence plea, if any, before the trial Court at the appropriate stage. In the facts and circumstances as depicted from record, this Court does not find reasons to interfere with the impugned orders by exercise of its discretionary power under Section 482 of Cr.P.C.

7. Hence, all the CRLMCs stand dismissed.

(S.Pujahari)
Judge

MRS