

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3062 of 2014

Ranjib Lochan Mohanty & another. ***Petitioners***

*M/s. Sanjit Mohanty, Sr. Advocate,
S.P. Panda, J.K. Nayak, , Advocates*

-versus-

State of Odisha & others. ***Opposite Parties***
*Addl. Standing Counsel – For O.P. Nos.1 & 2
Mr. P.K. Parhi, A.S.C. – For O.P. No.2*

CRLMC No.3063 of 2014

Rajib Lochan Mohanty & others. ***Petitioners***

*M/s.Sanjit Mohanty, Sr. Advocate,
S.P. Panda, J.K. Nayak, Advocates*

-versus-

State of Odisha & othes. ***Opposite Party***
*Addl. Standing Counsel – For O.P. Nos.1 & 2
Mr. P.K. Parhi, A.S.C. – For O.P. No.2*

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
11.08.2022**

**Order
No.**

06. **1.** Both the matters are taken up through hybrid mode.

2. The issue involved being common to both the CRLMC applications filed under Articles 226 and 227 of the Constitution of India (subsequently converted to ones under Section 482 of Cr.P.C.) seeking for intervention of this Court to quash the orders of cognizance taken under Section 15 of the Environment (Protection) Act, 1986 (for short “the Act”) passed by the learned S.D.J.M., Bonai in 2(c) C.C. No.67 of 2013 and 2(c) C.C. No.55 of 2013 respectively, upon the complaints filed by the Collector, Sundergarh, representing the Government of India, Ministry of Environment and Forests, for the alleged commission of offence under Section 19(a) of the Act, both the matters are taken up together for disposal.

3. Heard Mr. Sanjit Mohanty, learned senior counsel appearing for the petitioners in both the cases, and the learned counsel appearing for the opposite parties.

4. The petitioners in CRLMC No.3062 of 2014 are the Directors of M/s. Sun Alloys & Minerals Ltd. and the petitioners in CRLMC No.3063 of 2014 are the Directors of MGM Minerals Ltd., both having their registered offices at Forest Park, Bhubaneswar. M/s. Sun Alloys & Minerals Ltd. is the lessee in respect of Patamunda Iron and Manganese Mines, At- Koirā, District- Sundergarh and MGM Minerals Ltd. is the lessee in respect of Patabeda Iron Ore Mines, also situated in the same district. Needless to mention that both the above mentioned Companies are juristic persons, and in the complaints they have not been arraigned as parties (accused).

5. In 2(c) C.C. No.67 of 2013 it is alleged that the corresponding Mining project had carried out production for the period from 2000-2001 to 2009-2010 without obtaining the requisite prior environmental clearance as required under Environmental Impact Assessment (EIA) Notification, 2006, and in 2(c) C.C. No.55 of 2013 it is alleged that

the corresponding Mining Project had carried out production for the period from 2000-2001 to 2005-2006 without obtaining the aforesaid requisite environmental clearance. It is further alleged that both the Companies operated mining activities without complying with the procedural safeguard, which was hazardous to the environment affecting the general public of the respective areas at large, and also causing loss of huge revenue to the Government. Accordingly, alleging commission of offence under Section 19(a) of the Act, the prosecutions have been launched against the respective Directors of both the companies under Section 15 of the Act.

6. Mr. Sanjit Mohanty, the learned senior counsel appearing for the petitioners in both the cases is critical of the impugned orders on the grounds, inter-alia, that the learned S.D.J.M., Bonai, failed to apply judicial mind to the factual as well as legal aspects of both the cases, inasmuch as it is a matter of record that the Companies had duly complied with the

relevant EIA Notifications and paid royalty, taxes and other statutory dues in respect of the Minerals produced and despatched from the leasehold areas, and also for the reason that in view of the settled principles of law, the petitioners could not have been brought into the array of the accused persons in absence of the lessee-companies being impleaded as party-accused in the proceedings initiated under Section 15 of the Act.

7. Summoning an accused being a serious matter, before taking cognizance of any offence or issuing summons to an accused, the Court ought to have applied its judicial mind to the facts and materials on record to find out as to if any prima-facie case sustainable in law is made out against the accused. The learned senior counsel in this regard relies on the case of ***M/s. Pepsi Foods Ltd. and another vrs. Special Judicial Magistrate and others***, reported in (1998) 5 SCC 749. In support of his contention that the prosecutions are not

maintainable against the petitioners, he has also placed reliance on the decisions of the Apex Court in the cases of **National Small Industries Corporation Ltd. vrs. Harmeet Singh Paintal and another**, reported in (2010) 3 SCC 330, **Aneeta Hada vrs. Godfather Tours and Travels Pvt. Ltd.**, reported in (2012) 5 SCC 661, **Sharad Kumar Sanghi vrs. Sangita Rane**, reported in (2015) 12 SCC 781 and **Ravindranatha Bajpe vrs. Mangalore Special Economic Zone Ltd. and others**, reported in 2021 SCC OnLine SC 806

8. In relation to 2(c) C.C. No.67 of 2013, it is submitted that in compliance with the EIA Notification dated 14.09.2006 which superseded the earlier Notification of 1994 and which was clarified from time to time, the Company had submitted an application for clearance on 21.11.2009, and conditional environment clearance was issued by MoEF vide Letter No.3561 dated 27.12.2012, and the alleged excess production for the period indicated was

not in contravention of the Notification, 2006, inasmuch as, as per the circulars issued subsequently, the Projects not seeking clearance under the said Notification by 30.06.2007 will be treated as violation under Section 15 of the Act. It is stated that the competent authority after considering the actual production from the Mines for the preceding five years had granted environmental clearance on 27.11.2012 on condoning the alleged irregularities.

9. In relation to 2(c) C.C. No.55 of 2013, it is the submission of the learned senior counsel for the petitioners that in compliance with the EIA Notification dated 14.09.2006 referred to above, the Company had submitted an application for clearance on 10.12.2004 and environment clearance was issued by MoEF vide Letter dated 21.07.2005, after taking into account all the factors including the production achieved in earlier years. It is further submitted that for expansion of the production the

lessee-company in the said case submitted letters dated 09.02.2009, 27.10.2009 and 30.11.2009 along with the applications for terms of reference to the State Environment Impact Assessment Authority (SEIAA), Odisha, and that environment clearance was issued by the said Authority on 11.12.2009 on taking into account all the factors including the production achieved in the earlier years. It is further submitted by the learned senior counsel for the petitioners that the lessee-companies have not carried out any act having any detrimental effect or prejudicial impact on the environment and there has been no allegation against the companies from any quarter for causing any pollution or damage to the environments. With the submissions as above, the proceedings in both the complaint cases have been sought to be quashed.

10. Learned counsel appearing for the opposite parties, however, submit that the points raised by the petitioners in both these cases being nothing but their defence plea, at the threshold of the criminal

proceedings, those are premature to be looked into. It is their further submission that since the petitioners are undisputedly the Directors of the lessee-companies, it cannot be said that they are not liable for the illegal omissions or commissions attributable to the lessee-companies.

11. In course of hearing, the learned senior counsel has taken me through the relevant Notifications, the successive clarificatory letters and Notifications and other correspondences in that regard, in support of his submission that the Mining operations and productions were carried out without any contravention of the statutory provisions and Rules. It is true that at the time of taking cognizance, the Court is not called upon to make a threadbare analysis of the factual details and the documents relied upon by the prosecution / complainant. But, at the same time the Court will fail in duty if summons is issued against the persons made accused without any legally sustainable case being available ex-facie.

In the case of **M/s. Pepsi Foods Ltd.** (supra) it was observed by the Apex Court that summoning of an accused in a criminal proceeding being a serious matter, the Court is legally enjoined to apply its mind to all the materials on record as well as the laws applicable on the subject before deciding to proceed against the accused.

12. In both the complaints, the lessee-companies have not been arraigned as accused. In the context, Section 16 of the Act may be referred to. As per the said section, where any offence under the Act has been committed by a company, not only every person directly in charge of and responsible to the company for the conduct of its business at the time of commission of the offence, but also the company itself shall along with them be deemed to be guilty of the offence. It is only when the company and the persons indicated above are together made accused in the proceeding, those persons or any of them may prove in defence that the offence was committed without his

/ their knowledge or that he / they exercised due diligence to prevent the commission of such offence. The said section also carries a provision that notwithstanding the above, where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance or is attributable to any neglect on the part of any Director, Manager, Secretary or other Officers of the company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of that offence. A perusal of the complaints in the present cases would show that there is no allegation that the petitioners were directly in charge of the mining activities of the company or responsible for the conduct of the said activities forming subject-matter of the complaints.

13. In the case of **Aneeta Hada** (supra), a three Judge Bench of the Apex Court held as under:-

“Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear

that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself.”

14. In the case of **Sharad Kumar Sanghi** (supra), the Apex Court held as under:-

“11. In the case at hand as the complainant’s initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director.

When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in *Aneeta Hada v. Godfather Travels and Tours (P) Ltd.* in the context of the Negotiable Instruments Act, 1881.

12. xxxxxx xxxxxxxx

13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant.”

15. Further, in a latest pronouncement the Apex Court in the case of ***Ravindranatha Bajpe*** (supra) held as under:-

“27. As held by this Court in the case of *India Infoline Limited* (supra), in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company

Secretary and the Directors of the Company and the role played by them in their respective capacities which is *sine qua non* for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director / Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A1 & A6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6.

28. ★ From the order passed by the learned Magistrate issuing the process against the respondents herein – accused nos.1 to 8, there does not appear that the learned Magistrate has recorded his satisfaction about a *prima facie* case against respondent nos.2 to 5 and 7 & 8. Merely because respondent Nos.2 to 5 and 7 & 8 are the Chairman / Managing Director / Executive Director / Deputy General Manager / Planner & Executor, automatically they cannot be held vicariously liable, unless, as observed hereinabove, there are specific allegations and averments against them with respect to their individual role. Under the circumstances, the High Court has rightly dismissed the revision

applications and has rightly confirmed the order passed by the learned Sessions Court quashing and setting aside the order passed by the learned Magistrate issuing process against respondent nos.1 to 8 herein – original accused nos.1 to 8 for the offences punishable under Sections 427, 447, 506 and 120B read with Section 34 IPC.”

16. In the cases at hand, the lessee-companies being not arraigned as accused, the concept of vicarious liability is not attracted to them. Further, there being no allegation that the companies committed the alleged offence with the consent or connivance of the petitioners, or that the offence is attributable to any neglect on their part, the criminal proceedings could not have been launched against them.

17. In view of the principles of law stated above, and no prima-facie case having been made out against the petitioners, this Court is inclined to invoke the power under Section 482 of Cr.P.C. for quashing of the impugned orders of cognizance as well as the consequential proceedings against them.

18. Accordingly, both the CRLMCs stand allowed, and the impugned orders passed in the complaint cases bearing 2(c) C.C. No.67 of 2013 and 2(c) C.C. No.55 of 2013 in the court of the S.D.J.M., Bonai, as well as the consequential proceedings stand quashed.

19. Urgent certified copy of this order be granted on proper application.

(S.Pujahari)
Judge

MRS

