IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.5708 of 2014

Ashok Passary & another. .... ***Petitioners***
M/s. Asok Mohanty, Sr. Advocate,
S.P.Sarangi, D.K. Das, P.K. Dash,
A. Pattnaik, B.P. Das, Advocates

-versus-

State of Odisha & others. .... ***Opposite Parties***
Addl. Standing Counsel – For O.P. Nos.1, 3 & 4
Mr. P.K. Parhi, A.S.C. – For O.P. No.2

CORAM:
JUSTICE S. PUJAHARI

ORDER
11.08.2022

Order No.

08. **1.** This matter is taken up through hybrid mode.

2. This is an application filed under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") seeking for quashing of the order dated 31.07.2013 passed by the learned Judicial Magistrate First Class, Barbil in 2(c) C.C. No.107 of 2013 taking cognizance of the offence under Section 15 of the Environment (Protection) Act, 1986 (for short "the Act") against the petitioners for alleged contravention of the provisions of Section 19 of the Act.

3. Heard Mr. Asok Mohanty, learned senior counsel for the petitioners and the learned counsel appearing for the opposite parties.

4. The aforesaid prosecution has been launched pursuant to a complaint filed by the Sub-Divisional Magistrate, Champua, who was authorized to do so by the Central Government. It is alleged that M/s. Narayani Sons Pvt. Ltd., Suruguturia Iron Ore Mines (for short "Lessee-company"), located at Suruguturia, District- Keonjhar operated excess production of Mines during the years 2003-04 to 2007-08 without requisite environment clearance, in contravention of the Environmental Impact Assessment (EIA) Notification as amended from time to time. It is further alleged that the present petitioner no.1 with the connivance of the petitioner no.2 indulged in the said contravention and thereby both became liable to be prosecuted under Section 15 of the Act.

5. Mr. Asok Mohanty, the learned senior counsel appearing for the petitioners, submitted, inter-alia, that the learned J.M.F.C., Barbil failed to apply his judicial mind to the factual as well as legal aspects of the case, inasmuch as it is a matter of record that the Company had not exceeded its highest production achieved during the year 1993-94 or the preceding years till the year 2008-09. Since the production had not exceeded as per the circular of 2004, the allegation made regarding excess production during the subject period, i.e., 2003-04 to 2007-08 is without any basis, being contrary to the circular of the Ministry of Environment and Forests. It is further stated that since the lessee-company undertook mining operation in accordance with the terms and conditions of the mining lease deed and within the permissible production limit as approved by the I.B.M., and since such production and despatch from the leasehold area was in accordance with the permission issued by the competent authority, and the royalty, taxes and other statutory dues in respect of the said mineral having been duly paid, no offence was made out against the lessee-company much less the petitioners. It is further submitted on behalf of the petitioners that the lessee-company applied for environmental clearance since 04.12.2006 and the clearance was issued by MoEF on 28.03.2007 after taking into account all the factors including the production achieved in the earlier years.

6. It is further emphasized that in absence of the lessee-company being impleaded in the proceeding, the prosecution against the petitioners is not maintainable in view of the provision under Section 16 of the Act, especially when during the subject period, the petitioner no.1 was not associated with the affairs of the lessee-company, inasmuch as he was appointed as Director of the Company only in the year 2012, and the petitioner no.2 was only looking after the affairs of the labour, office stationery and accounting related matters etc. of the lessee-company without being involved in the day to day mining activities. It is thus contended by the petitioners that the complaint filed against them is misconceived, inasmuch as no attempt was made by the complainant to ascertain whether they were employed during the relevant period or involved in the mining related activities of the lessee-company during the said period. It is further pointed out that there is no specific allegation against the petitioners. Reliance is placed by the learned senior counsel on the decisions of the Apex Court in the case of ***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.

7. Per contra, the learned counsel appearing for the opposite parties submit that the points raised by the petitioners being nothing but their defence plea simpliciter, at the threshold of the criminal proceeding, those are premature to be looked into. It is their further submission that since the petitioners are undisputedly the Director and Manager of the lessee-company respectively, it cannot be said at this stage that they are not liable for the illegal omission and commissions attributable to the lessee-company.

8. In the case of ***M/s. Pepsi Foods Ltd. and another vrs. Special Judicial Magistrate and others,*** reported in (1998) 5 SCC 749, 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 them.

9. In the case of ***Aneeta Hada vrs. Godfather Tours and Travels Pvt. Ltd.,*** reported in (2012) 5 SCC 661, 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."

10. 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 xxxxxxx

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."

11. 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."

12. As already stated, the petitioner no.1 became the Director of the lessee-company only in the year 2012 and in that backdrop, the alleged contraventions on the part of the lessee-company during the period from 2003-04 to 2007-08 cannot be attributed to him. There is also no allegation in specific in the complaint as to whether the petitioner no.2 was associated with the mining activities of the lessee-company. As per Section 16 of the Act, 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. The complaint in the present case reveals no allegation that the petitioners were directly in charge of and responsible for the conduct of the mining activity of the company forming subject-matter of the prosecution. In the case at hand, the lessee-company being not arraigned as accused, concept of vicarious liability is also not attributed to the petitioners. Further, there is no allegation that the company committed the alleged offence with the consent or connivance of the petitioners or the alleged offence is attributable to any neglect on the part of the petitioners. The mere allegation in the complaint that the petitioners in connivance with each other produced Iron Ore beyond permissive quantity during the relevant period does not suffice the launching of the prosecution against them, particularly when the lessee-company is not arraigned as an accused.

13. In view of the factual position indicated above, and taking note of the principles of law as enunciated, this Court is inclined to invoke the power under Section 482 of Cr.P.C. for quashing of the impugned order as well as the consequential proceedings against the petitioners, inasmuch as the allegations even at their face value do not make out any prima-facie case under the Act against them.

14. Accordingly, the CRLMC stands allowed, and the impugned order passed in 2(c) C.C. No.107 of 2013 in the court of the learned J.M.F.C., Barbil as well as the consequential proceedings stand quashed.

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

(S.Pujahari)
Judge

MRS