

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2657 of 2009

Suvendu Kumar Parida and others ***Petitioners***

-versus-

State of Orissa ***Opposite Party***

CORAM: JUSTICE S.PUJAHARI

ORDER

16.03.2022

Order
No.

12. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order dated 21st May, 2008 passed by the learned S.D.J.M., Karanjia in G.R. Case No.497 of 2007/T.C. No.782 of 2008, taking cognizance of the offence under Section 12 of Orissa Mineral (Prevention of Theft and Smuggling and other Unlawful Activities) Act.
3. Heard the learned counsel for the Petitioners and the learned counsel for the State.
4. Learned counsel for the Petitioners submits that after coming into operation of the M.M.D.R. Act, since the aforesaid provision was held to be inoperative by the decision of this Court in the case of M/s. Jai Durga Iron Pvt. Ltd. & Anr. v. Superintendent of Police, Sundergarh and & Ors., reported in MANU/OR/0547/2006 : (2006) 34 OCR 655 in paragraphs-12 and 13 held as follows:-

“12. From the above, it is clear that the State Act legislated by the State Legislature being in relation to Entry 23 of List-II in the 7th Schedule of the Constitution, which is with regard to Regulation of Mines and Minerals Development,

the same is subject to the provisions of List-I with respect to Regulation and Development under the control of the Union. Thus, the above State Act was in force as no similar provisions were included in the M.M. (D.&R.) Act which is a Central legislation under Entry 54 of List-I of the 7th Schedule. In view of the declaration made in Section 2 of the M.M.(D&R) Act, the moment similar provisions as contemplated in the State Act were provided for in the M.M.(D&R) Act by way of amendment with effect from 18.12.1999, the said provisions in the State Act became inoperative being occupied by the Central legislation.

13. In view of the above amendment brought to the M.M.(D.&R.) Act by the central legislation with effect from 18.12.1999, in our considered view, the provisions of Section 12 of the M.M.(D.&R.) Act with regard to penalty which can be imposed on a person who fails to comply with or contravene any of the provisions of the State Act and the provisions of Section 16 of the State Act with regard to seizure of property liable to be confiscated and prosecution for such offences under Section 12 of the State Act can no longer be made applicable to minerals which are covered in the M.M.(D&R) Act.”

5. Learned counsel for the State does not dispute the aforesaid law laid down by this Court in the case of M/s. Jai Durga Iron Pvt. Ltd. & Anr. V. Superintendent of Police, Sundergarh & others, reported in MANU/OR/0547/2006 : (2006) 34 OCR 655.

6. A Division Bench of this Court placing reliance in the case of Baijnath v. State of Bihar, reported in MANU/SC/0352/1969 : AIR 1970 SC 1436 and also M/s. Jai Durga Iron Pvt. Ltd. (supra) in the case of M/s. T.R. Chemicals Ltd. and another v. State of Orissa and another, reported in MANU/OR/0164/2008 : AIR 2008 Orissa 126, in respect of rules framed in paragraph-16 held as follows:-

“16. The 1999 amendment to the MMDR Act has to be held to be a “declaration” by a superior legislature with the intention to cover the whole field, especially covered under Section 23C and therefore, any enactment of the other legislature whether passed before or after must be held to be inoperative. This judgment of the Apex Court was relied upon by this Court in the case of M/s. Jai Durga Iron Pvt.

Ltd. (supra) wherein this Court has come to hold that the moment similar provisions as contemplated in the State Act were provided for in the M.M. (D.&R.) Act, by way of amendment, with effect from 18.12.1999, the said provisions in the State Act became inoperative being occupied by the central legislation. Therefore, after the amendment to the Central Act, 1957, neither the Orissa Act, 1989 nor 1990 Rules framed thereunder have any competence nor were any longer enforceable.”

7. In view of the law laid down as above, prosecution under Section 12 of Orissa Mineral (Prevention of Theft and Smuggling and other Unlawful Activities) Act, is, therefore, incompetent.

8. I would, therefore, allow this Criminal Misc. Case and quash the impugned order of cognizance and the proceeding against the Petitioners in G.R. Case No.497 of 2007/T.C. No.782 of 2008, pending in the court of S.D.J.M., Karanjia or the Court in seisin over the matter. Hence, on receipt of this order/production of the certified copy of this order, the court concerned shall close the proceeding in the aforesaid case in compliance to this order.

9. However, the aforesaid order shall not stand on the way of the aforesaid authority to proceed against the Petitioners, if any offence committed under the MMDR Act.

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

(S.Pujahari)
Judge