

THE HON'BLE DR. JUSTICE D.NAGARJUN

WRIT PETITION No. 38515 of 2016

ORDER:

This writ petition is filed seeking quashment of FIR filed in Crime No.54 of 2016 on the file of Kulkacherla Police Station, Ranga Reddy District dated 15.06.2016.

The facts in brief as can be gathered from the affidavit filed along with this writ petition are that originally one Kumari G.L. Nanditha was granted mining lease for 20 years in the land over Sy.No.415 at Bandavakacherla Village, Kulkiacherla Mandal, Ranga Reddy District vide G.O.Ms.No.242, dated 04.06.2002. The said Nanditha, in turn, transferred the said mining lease in favour of the petitioners in the year 2009. The petitioners were granted MDR license bearing No.834/MDR/RR/2010 in favour of M/s. Matrix Natural Resources Private Limited by the Director of Mines and Geology, Tandur, Ranga Reddy District/6th respondent herein. The petitioners made an application dated 07.01.2010 to the Ministry of Environment and Forests seeking environmental clearance for mining of quartz and feldspar mine. Mining plan was approved to the petitioners on 29.05.2010 by the Department of Mines and Geology. The petitioners proceeded to

operate the mine even before the environment clearance was granted under the incorrect assumption.

The Ministry of Environment and Forest, Government of India, vide letter dated 31.12.2013 informed the petitioners that operation of mines from 2010 to 2012 was without prior environment clearance and they were directed to stop the mining activity. The petitioners were also directed to attend on 16.12.2015 before the Joint Collector, Ranga Reddy, for hearing and accordingly, they attended the hearing and informed the authorities that the default committed by them was unintentional and that they themselves brought this to the notice of the authorities, but their request was not considered. A direction was given to file a case against the petitioners for commencing the mine without environment clearance.

The Assistant Director of Mines and Geology, Tandur/7th respondent herein has filed a complaint before the learned Judicial First Class Magistrate, Pargi, Ranga Reddy District under Section 200 Cr.P.C. alleging that the petitioners have committed offence punishable under Section 7 read with Section 15 of the Environment (Protection) Act, 1986 (for short, “the Act”) and the same was referred to the police on which a

case in Crime No.54 of 2016 was registered for the abovesaid offences. Aggrieved by the said crime, the present writ petition is filed on the following grounds:

- 1) The petitioners themselves have informed the authorities that the department has not cleared their request of granting environmental license though the application was filed long ago.
- 2) The other departments have been granting permissions regularly to the petitioners for conducting mining business.
- 3) Since the petitioners themselves have admitted that they have committed default, no further investigation is required.
- 4) Petitioner No.2 is not having any vicarious liability and therefore, cannot be roped into the criminal case and the FIR is registered and the said complaint is vexatious.

Heard the learned counsel for the petitioners and the learned Assistant Public Prosecutor and perused the record.

Now the point for determination is:

Whether the proceedings in FIR.No.54 of 2016 against the petitioners can be quashed?

The facts in this case are not in dispute. The petitioners started excavating the mines in Sy.No.415 of Bandavakacherla Village, Kulkacherla Mandal, which was originally granted in favour of one Kumari G.L. Nanditha. The petitioners have taken permission of all the departments for doing the mining.

Section 7 of the Act reads as under:

“7. Persons carrying on industry, operation, etc., not to allow emission or discharge of environmental pollutants in excess of the standards. – No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.”

The petitioners are expected to obtain environment clearance as required under Section 7 of the Act to show that the environment pollution is not in excess of the standard prescribed on account of mining by the petitioners.

Section 15 of the Act deals with the penal provision, which runs as follows:

“15. Penalty for contravention of the provisions of the Act and the rules, orders and directions. – (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend

to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.”

The allegation of respondent No.7/department is that since the petitioners have been mining without having pollution clearance, they are liable for the punishment under Section 15 of the Act.

The petitioners, on the other hand, submitted that they themselves have notified at the first place that they are excavating quartz without the environment clearance being granted, as the grant or otherwise of the mining clearance is not in their hands and they have applied for such clearance long ago. However, the department has not cleared the application so far and hence prayed the Court to exonerate them.

After hearing both sides, the petitioners have filed a Memo along with copy of challan which shows that they have paid an amount of Rs.1 lakh towards penalty for committing offence. Section 15, as referred above, indicates that the person, who fails to comply with the requirements under this Act and acts in

contravention will be punished with an imprisonment for a term, which may extend to 5 years or with fine, which may be extended to Rs.1 lakh.

Learned counsel for the petitioners submits that the offence alleged against the petitioners can be compoundable under Section 15 of the Act and accordingly, fine amount of Rs.1 lakh has already been imposed by the department was paid by the petitioners and prayed the Court to discharge the petitioners from the criminal liability by quashing the criminal complaint filed against them.

Learned Assistant Public Prosecutor has also reported that the case against the petitioners was compounded and the same may be recorded.

Considering the circumstances, since the offence alleged against the petitioners have already been compounded and an amount of Rs.1 lakh has been paid, the FIR pending in Crime No.54 of 2016 for the same offence will not be sustained. Therefore, it is a fit case where the FIR can be quashed.

Accordingly, the writ petition is allowed and the FIR.No.54 of 2016 dated 15.06.2016 on the file of Kulkacherla Police Station, Ranga Reddy District is hereby quashed.

Miscellaneous applications, if any, shall stand closed. No costs.

DR. D.NAGARJUN, J

Date: 23.06.2022
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