

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1290 of 2022

Arising Out of PS. Case No.-104 Year-2021 Thana- HULASGANJ District- Jehanabad

Lalan Singh @ Lalan Kumar Son of Shree Ram Singh Resident of Village-
Kandaul, P.S.- Hulasganj, District- Jehanabad

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Mines and Minerals Government of Bihar, Patna
2. The Principal Secretary, Department of Mines and Minerals Government of Bihar, Patna
3. The Director, Mines and Minerals Cum competent authority, Department of Mines and Minerals Government of Bihar, Patna
4. The Competent Authority, the District Mining Office, Jehanabad Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Adv.
For the Mines	:	Mr. Naresh Dikshit, Spl. P.P. Ms. Kalpana, Adv.
For the State	:	Mr. Abhishek Singh, Ac to Ga-7

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 09-05-2023

Heard learned counsel for the petitioner, learned counsel for the Mines Department and learned counsel for the State.

Counsel for the petitioner has filed the present criminal writ application with a prayer to quash the F.I.R. being Hulasganj P.S. Case No. 104 of 2021 dated 17.07.2021 registered under Sections 379, 411, 34 of the I.P.C. instituted by the Competent Authority, District Mining Office, Jehanabad.

Counsel for the petitioner submits that from the

contents of the F.I.R., it is very much clear that the authorities who have filed the complaint is the Competent Authority, District Mining Office, Jehanabad. Counsel has put emphasis that according to Mines and Mineral Act and Rules, the case has to be filed by virtue of complaint as Section 22 of the said Act talks about that no Court shall take cognizance of any offence punishable under this Act or any Rules made thereunder, except upon complaint in writing made by a person authorized in this behalf by the Central Government or the State Government.

Counsel submits that on this technical ground, this F.I.R. is fit to be quashed.

Counsel for the Mines Department submits that a detailed counter affidavit has been filed in which the latest judgment passed by the Hon'ble Supreme Court in case of ***Kanwar Pal Singh Vs. The State of Uttar Pradesh & Another*** decided in ***Cr. Appeal No. 1920 on 2019 (arising out of S.L.P. (Criminal) No. 10707 of 2019)*** has been annexed as Annexure-A in which the Hon'ble Supreme Court pleased to hold that even, if only complaint is permissible for violation of matters relating to Mines Rules and Regulations, then also the case filed under Section 379 of the I.P.C. and Sections 3/ 4 of the Prevention of Damage to Public Property Act are

maintainable.

Counsel for the Mines Department submits that since this case has been filed under Section 379 of the I.P.C., then it is not fit to be quashed and it should continue.

Counsel for the petitioner submits in response thereof that from the seizure list, it transpires that sand has not been recovered from his tractor and at the time of seizure, the tractor was empty. In response thereof, counsel for the Mines Department submits only two points. The first point is that petitioner has criminal antecedent of doing the same act and the second point is that the definition of theft as mentioned in Section 378 of the I.P.C. that whoever intending to take dishonestly any movable property out of possession of any person without person's consent moves the property in order to such taking is said to commit theft.

This Court is of the view that there are certain factual aspects which are admitted. Firstly, that the petitioner was not competent to collect the movable property *i.e.* sand, secondly, the petitioner was trying to remove the sand from the possession of his owner *i.e.* the Mines Department without the consent of Mines Department. It is also there that the sand which was kept at one place, at the time of raid was dropped by

the petitioner at other place. Meaning thereby, without his permission the movable property has been shifted from one place to another.

In this view of the matter, this Court is of the view that offence of theft has been made and, therefore, not inclined to grant any relief(s).

With this observation, the present criminal writ application stands dismissed.

(Dr. Anshuman, J.)

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CAV DATE	
Uploading Date	
Transmission Date	