

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.2833 of 2018

Arising Out of PS. Case No.-11 Year-2018 Thana- NAWADA MUFFASIL District- Nawada

Aman Sethi, S/o Late Shri Som Prakash Sethi, Plot No.182,Phase IV, Udyog Vihar, P.O. and P.S.Udyog Vihar, Phase 1,Gurgaon Haryana

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government Of Bihar, Main Secretariat, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Nawada.
4. The Officer-in-Charge, Nawada Muffasil Police Station- Nawada
5. The Principal Secretary, Mines and Geology Department, Bihar,Patna
6. The Assistant Director Mines Nawada (informant)
7. The District Mines Development Officer, Nawada
8. The Mines Inspector, Nawada

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sriram Krishna, Advocate Mr. Amarjeet, Advocate Mr. Prabhat Kumar Singh, Advocate
For the State	:	Mr. Gyan Prakash Ojha, G.A.-7
For the Mines Department:		Mr. Naresh Dixit, Advocate Ms. Kalpana, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 10-04-2023

This application has been filed for quashing of F.I.R. vide Nawada Muffasil P.S. Case No. 11 of 2018 registered for the offence under Section 15 of the Environment (Protection) Act, 1986 and Section 4/40 of the Bihar Minor Mineral Concession Rules, 1972.

The petitioner is a leasee, for extracting minor minerals of stones for 5.66 hectare, in Block No.11, Khata



No.4256 at village - Badhokora, District- Nawada being the successful bidder. Thereafter, the petitioner started the work in the month of April, 2017 after completing the requisite formalities and obtaining permission from the competent authority. It is alleged that an inspection was made at different projects including the project of the petitioner and during inspection it was found that some environmental clearance as well as terms and conditions of the mining lease/license have been violated. Accordingly, the present F.I.R. has been lodged against the petitioner.

Learned counsel for the petitioner submits that in the entire prosecution vague allegation has been made against the petitioner and on the basis of vague allegation the petitioner cannot be prosecuted.

In support of above submission, learned counsel for the petitioner has relied upon the decisions of the Hon'ble Supreme Court in the case of *Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors.* reported in (1998) 5 SCC 749 and in the case of *State of Haryana v. Bhajan Lal* reported in 1992 Suppl (1) SCC 335.

Learned counsel for the respondents have not been able to controvert the submission of learned counsel for the



petitioner in view of the aforesaid decisions on which the petitioner relies upon.

I have considered the submissions of learned counsel for the parties and also perused the materials available on record.

From perusal of the letter dated 13.01.2018 of the Assistant Director, Mines, District- Nawada, on the basis of which the present F.I.R. has been lodged, it appears that the allegation against the petitioner is vague and it is only in three line. The relevant portion of the said letter reads as under:-

“उक्त पत्थर खनन पट्टों के निरीक्षण के दौरान SEIAA बिहार द्वारा निर्गत पर्यावरणिक स्वीकृति शर्तों का उल्लंघन पाया गया, साथ ही बिहार लघु खनिज समनुदान नियमावली, 1972 के नियम 21(A) का भी उल्लंघन है।”

The Hon’ble Supreme Court in the case of ***State of Haryana v. Bhajan Lal*** (supra) has held in paragraph no.102 as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter 14 and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised



either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such a power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at the face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently*



improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Relying on the aforesaid decision rendered in the case of ***State of Haryana v. Bhajan Lal*** (supra), the Hon’ble Supreme Court in the case of ***Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors.*** (supra) has held as under:-

“22. It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others vs. Bhajan Lal, this court examined the extraordinary power under article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either



to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this



Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.”

In the present case, it is an admitted position that the allegation against the petitioner is vague. In the opinion of this Court, the present case is fully covered by categories 1 and 2, as enumerated in *State of Haryana vs. Bhajan Lal* (supra). Therefore, the petitioner cannot be prosecuted on the basis such such vague allegation.

In view of the above, this application is allowed. Accordingly, F.I.R. vide Nawada Muffasil P.S. Case No. 11 of 2018 registered for the offence under Section 15 of the Environment (Protection) Act, 1986 and Section 4/40 of the Bihar Minor Mineral Concession Rules, 1972 and all consequential proceedings arising out of the aforesaid F.I.R. are hereby quashed with respect to present petitioner only.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	24.04.2023.
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