

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.129 of 2019**

Arising Out of PS. Case No.-10 Year-2017 Thana- PASRAHA District- Khagaria

1. Saurav Kumar Agarwal, Son of Sri Ashok Kumar Agarwal R/o Mohalla- Ambedkar Chowk, Mirchibari, P.S- Katihar Sahayak, District- Katihar
2. Gourav Kumar Agarwal @ Gaurav Agarwal, S/o Sri Ashok Kumar Agarwal R/o Mohalla- Ambedkar Chowk, Mirchibari, P.S- Katihar Sahayak, District- Katihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                      |   |                                                                                                                                                       |
|----------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr.Gautam Kumar Kejriwal, Advocate<br>Mr.Alok Kr. Jha, Advocate<br>Mr.Mukund Kumar, Advocate<br>Mr.Akash Kumar, Advocate<br>Mr.Aditya Raman, Advocate |
| For the Respondent/s | : | Ms.Asha Kumari, APP                                                                                                                                   |

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL ORDER**

7      24-01-2024                      1. The petitioners are Directors of Topline Infra Projects Pvt. Ltd., a Company incorporated under the Companies Act, 1956, having its registered office at Kolkata, West Bengal. The said company owns one white and blue coloured JCB and two Sonalika Tractors with lorry/carrier attached therein.

2. On the basis of a written complaint submitted by Anchal Adhikari (Land Revenue Officer), Parbatta, Police registered Pasraha P.S Case No. 10 of 2017, dated 2<sup>nd</sup> of February, 2017, under Rule 4 of 2014 of the Bihar Minor



Mineral Concession Rules (Rules), 1972 against the petitioners and took up the case for investigation. On completion of investigation, Police submitted charge-sheet under Rule 4 of 2014 of the Bihar Minor Mineral Concession Rules (Rules), 1972, against the petitioners. By an order, dated 12<sup>th</sup> of December, 2017, the learned Chief Judicial Magistrate, Khagria, on the basis of Police report, took cognizance. The order of taking cognizance of offence is under challenge in the instant Revision, at the instance of the accused persons/petitioners.

3. The learned Advocate on behalf of the petitioners at the outset submits that Section 22 of the Bihar Minor Mineral (Development & Regulation) Act, 1957 states that no Court shall take cognizance of any offence punishable under the 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. Section 15 of the said Act delegates power to the State Government to make Rules in respect of Minor Minerals. In exercise of the powers conferred by Section 15 of the Bihar Minor Mineral Concession Rules, 1972, the rule was promulgated by the Governor of Bihar vide a Notification No. 4275 M, dated 22<sup>nd</sup> of June, 1972. Rule 4 of the Bihar Minor Minerals Concession Rules, 1972 prohibits mining



operation without permit or mining lease. Rule 4 runs thus:-

**“Prohibition of mining operation without permit or mining lease.-**

(1) No person shall undertake any mining operation in any area, except under and in accordance with the terms and conditions of a quarrying permit or, as the case may be, a mining lease, granted under these Rules:-

Provided that nothing in this sub-rule shall affect any mining or quarrying operations undertaken in any area in accordance with the terms and conditions of a mining lease or quarrying permit granted before the commencement of these Rules which is in force at the time of such commencement.

(2) No quarrying permit or mining lease shall be granted otherwise than in accordance with the provisions of these Rules.”

4. Rule 40 prescribes the penalty for unauthorized extraction and removal of Minor Minerals. It is alleged by the complainant that the petitioners were extracting Minor Minerals unauthorizedly from the place of occurrence without any license or permit.

5. It is contended by the learned Advocate for the petitioners that both Section 22 of the Bihar Minor Minerals (Development & Regulation) Act, 1957 and Rule 41 of Bihar Minor Mineral Concession Rules, 1972 are abundantly explicit and clear that no Court shall take cognizance of offence except upon a complaint filed by a Competent Officer or Deputy Director of Mines or Additional Director of Mines or Director of



Mines or any other Officers empowered by the Government.

6. It is submitted by the learned Advocate appearing on behalf of the petitioners that the Land Revenue Officer is not an authorized Officer empowered by the Government to make any complaint before the Police against unauthorized extraction of Minor Minerals. Moreover, It is submitted by the learned Advocate for the petitioners that the learned Chief Judicial Magistrate was wrong in taking cognizance upon Police report because both the Act and the corresponding Rules is clear that cognizance can only be taken upon a complaint filed by an Officer especially authorized by the State Government or the Central Government, as the case may be.

7. In support of his contention, he refers to a decision of this Court in ***M/s Mahadev Enclave Pvt. Ltd. (in all) vs. State of Bihar (in all)*** reported in ***2019 (3) PLJR 166***. On the same point, he also refers to another unreported decision of a coordinate Bench of this Court passed in ***Cr.W.J.C No. 895 of 2016*** on 3<sup>rd</sup> of January, 2019 (***Santosh Kumar Sharma vs. State of Bihar through the Secretary Home & Ors***). Thus, the statutory provision as well as the judicial precedents are absolutely clear that the learned Magistrate cannot take cognizance of any offence under the Bihar Minor Mineral (Development & Regulation) Act, 1957



Act or Bihar Minor Minerals Concession Rules, 1972, except upon a complaint.

8. In the instant case, the learned Chief Judicial Magistrate took cognizance of offence on the basis of a Police report which is liable to be quashed, at the outset.

9. Second limb of argument advanced by the learned Advocate for the petitioners is that the petitioners are Directors of Topline Infra Projects Pvt. Ltd Company. It is settled by the Hon'ble Supreme Court in *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, reported in (2012) 5 SCC 661, that when an alleged offence is committed by a Company or its Directors on behalf of the Company, it is pertinent that unless the company the Principal Entity is prosecuted as an accused, the Subsidiary Entity, the individual Directors, cannot be held liable, in view of the provisions contained in Section 23 of the Bihar Minor Mineral (Development & Regulation) Act, 1957.

10. Having heard the learned Advocate for the petitioners and on perusal of the impugned order, this Court finds that for the reasons aforesaid the order of cognizance passed by the learned Chief Judicial Magistrate, Khagaria is liable to be quashed.

11. Accordingly, the order dated 12<sup>th</sup> of December,



2017, is quashed and set aside.

12. The instant Revision is allowed.

13. The petitioners are discharged from the case.

**(Bibek Chaudhuri, J)**

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