

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55151 of 2018

Arising Out of PS. Case No.-60 Year-2017 Thana- DIGHA District- Patna

Sanjay Singh @ Sanjay Kumar, S/o Late Indra Prasad Singh, R/o
Makhdumpur Digha, P.S.- Digha, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Santosh Kumar, Advocate Ms. Anu Priyadarshni, Advocate Mr. Utsav, Advocate Mr. Prakash Srivastava
For the Opposite Party/s :	Mr. Jharkhandi Upadhyay

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 06-09-2024

1. This is an application under Section 482 of the Code of Criminal Procedure, filed by the petitioner, praying for quashing of the order of cognizance, dated 26th of September, 2017, passed by the learned Sub-divisional Judicial Magistrate, Patna in connection with Digha P. S. Case No. 60 of 2017, T.R. No. 3046 of 2017 (Corresponding to G. R. No. 1868 of 2017), whereby and whereunder cognizance was taken under Section 384 of the Indian Penal Code read with Sections 4 and 40 of the Bihar Minor Mineral Concession Rules, 1972 and Sections 3 and 4 of Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003.



2. Digha P. S. Case No. 60 of 2017 was registered on the basis of a written complaint submitted by one Pappu Kumar that two boats of mixed red sand were being uplifted without any pollution certificate having been granted in his name, and capacity of each boat is approximately about 1600 cft. to 2200 cft. and 600 cft. to 1200 cft., respectively, at the instance of one Sajay Singh, receiving Rs. 500/- to Rs. 1,000/- per boat as rangdari. The informant also alleged that after receiving the said information, he along with his 5 to 6 employees, went to the place from where the minor mineral was being extracted and saw 10 to 20 persons engaged in each boat, loading sand from the said spot. Seeing assembly of large number of people, he could not resist the miscreants. He also saw 6 to 7 boats, waiting there. However, the informant with his employees managed to catch hold of 3 persons and brought them to Digha Police Station. He also informed the matter to the Assistant Director of the Department. After some time, the Officer Incharge, Digha Police Station and the Assistant Director went to the spot. On the basis of the said information, the police registered Digha P. S. Case No. 60 of 2017, dated 18th of March, 2017 under the aforesaid penal provisions.

3. It is contended on behalf of the petitioner that there



is no allegation to the effect that he was engaged in illegal mining, transportation and storage of sand from the place of occurrence. Therefore, Rules 4 and 40 of the Bihar Minor Mineral Concession Rules, 1972 and Rules 3 and 4 of the Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003 are not attracted against the petitioner.

4. It is also alleged by the petitioner that one Broadson Commodities Private Limited, without obtaining no objection certificate from Pollution Control Board, in connivance of the Mining Officers was engaged in illegal trade of minor minerals. Complaints were lodged against the said company by the near relatives of the petitioner. As a result, the aforesaid Pappu Kumar lodged false complaint against the petitioner.

5. It is further alleged by the petitioner that the Mining Development Officer instituted a criminal case on 5th of April, 2017, which was registered as Patliputra P. S. Case No. 109 of 2017, under Sections 379/34 of the Indian Penal Code read with Sections 4 and 40 of the Bihar Minor Mineral Concession Rules, 1972 and Sections 3 and 4 of Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003, against the aforesaid Pappu Kumar. The petitioner



also came to know through a reply obtained under the Right to Information Act that the place of occurrence from where sand was extracted was not settled with Pappu Kumar during the period 2015-2019.

6. It is contended on behalf of the petitioner that police submitted a purported charge-sheet in Digha P. S. Case No. 60 of 2017 without considering the fact that no charge-sheet can be submitted for any offence under the Mines and Minerals Act or the Rules framed thereunder, except on a complaint filed by the authorized officer. Therefore, the order of cognizance is bad and, accordingly, the petitioner has prayed for quashing of the order of cognizance taken on the basis of the charge-sheet filed in Digha P. S. Case No. 60 of 2017.

7. The learned Advocate on behalf of the petitioner at the outset draws my attention to the Mines and Minerals (Development and Regulation) Act, 1957, especially Section 22 of the said Act. Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 states: -

“22.- Cognizance of offences. - No court below 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.”

8. The learned Advocate for the petitioner next takes me to Bihar Minor Mineral Concession Rules, 1972. He submits that rule 4 of 1972 Rules prohibits mining operation without permit or mining lease. Rule 40 is a penal provision for unauthorized extraction and removal of minor minerals.

9. Next he refers to the written complaint submitted by the aforesaid Pappu Kumar. He submits that there is no allegation in the complaint that the petitioner was operating mining activities without permit or mining lease. When there is no allegation of unauthorized extraction or removal of minor minerals against the petitioner, Rule 40 also does not attract.

10. Similarly, the informant did not make any allegation to the effect that the accused illegally transporting sand from the place of occurrence. The only allegation against the petitioner is that he was indulged in taking Rangdari of Rs. 500/- to Rs. 1,000/- from the boat owners, who were extracting sand from the place of occurrence.

11. Section 22 of the Bihar Mines and Minerals (Development and Regulation) Act, 1957 is explicitly clear that the Magistrate cannot take cognizance of any offence punishable under the said Act or any rule made thereunder except upon a complaint in writing made by a person authorized



in this behalf by the Central Government or the State Government. Therefore, bar under Section 22 of the Bihar Mines and Minerals (Development and Regulation) Act, 1957 would be attracted only when Magistrate purports to take cognizance of any offence under the said Act or Rules made thereunder.

12. In support of his argument, learned Advocate for the petitioner refers to a decision of the Hon'ble Supreme Court in the case of *Jayant & Ors. v. State of Madhya Pradesh, reported in (2021) 2 SCC 670* and *State (NCT of Delhi) v. Sanjay, reported in (2014) 9 SCC 772*.

13. I have considered the relevant Act and Rules as well as the reported decisions of the Hon'ble Supreme Court carefully.

14. In the instant case, the learned Sub-divisional Judicial Magistrate, Patna took cognizance of offence under Section 384 of the Indian Penal Code read with Section 4 and 40 of the Bihar Minor Mineral Concession Rules, 1972 and Sections 3 and 4 of the Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003.

15. There is no dispute on the issue that the learned Magistrate had no power to take cognizance under 1972 Rules



and 2003 Rules against the petitioner in view of specific bar under Bihar Mines and Minerals (Development and Regulation) Act, 1957. However, the said bar is not attracted in case of offence under the Indian Penal Code. Police submitted charge-sheet against the petitioner also under Section 384 of the Indian Penal Code. The learned Magistrate took cognizance of offence under 384 of the Indian Penal Code against the petitioner. The learned Advocate for the petitioner in course of his argument did not utter even a single word assailing the order of taking cognizance under Section 384 of the I.P.C. It is specifically alleged by the informant that the petitioner was collecting Rs. 500/- to Rs. 1,000/- from the boat owners. It is to be decided during trial as to whether such act of the petitioner amounts to extortion within the meaning of Section 384 of the Indian Penal Code or not.

16. Therefore, while order of taking of cognizance under Sections 4 and 40 of the Bihar Minor Mineral Concession Rules, 1972 and Sections 3 and 4 of Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003 against the petitioner is quashed and set aside, this Court holds that the learned Magistrate rightly took cognizance of offence under Section 384 of the Indian Penal Code on the basis of the



materials in the charge-sheet.

17. Under such circumstances, the instant miscellaneous is partly allowed. The order of taking cognizance dated 26th of September, 2017 in respect of offence under Sections 4 and 40 of the Bihar Minor Mineral Concession Rules, 1972 and Sections 3 and 4 of Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003 against the petitioner is quashed and set aside. However, the case pending before the learned Sub-divisional Judicial Magistrate, shall continue against the petitioner in respect of offence under 384 of the Indian Penal Code.

18. With the aforesaid direction, the instant petition sands disposed of, on contest, however, without cost.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	28.08.2024
Uploading Date	06.09.2024
Transmission Date	06.09.2024

