

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 637 of 2017

Bhanu Pratap Singh

Versus

The State of West Bengal & Another

For the Petitioner : Mr. Arun Kumar Maiti (Mohanty), Adv.
Mr. Pinaki Ranjan Chakraborty, Adv.
Mr. Jasojeet Mukherjee, Adv.
Mr. R. R. Mohanty, Adv.
Ms. Snigdha Ghosh, Adv.
Mr. Shivam Saha, Adv.

For the State : Md. Anwar Hossain, Adv.
Mr. Pratick Bose, Adv.

Heard on : 13.09.2024

Judgment on : 04.10.2024

Ajay Kumar Gupta, J:

1. By filing the present Criminal Revisional application under Section 482 read with Section 397 of the Code of Criminal Procedure, 1973, petitioner/accused has prayed for quashing of the First Information Report being Chinsurah P.S. Case No. 87/17 dated 13.02.2017 under Sections 379/411/414 of the Indian Penal Code, 1860, read with Rule 50 of the West Bengal Minor Minerals Concessions Rules, 2016, Rule 3 of the West Bengal Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002 and Section 21(2) of the Mines and Minerals (Development and Regulation) Act, 1957 and the proceeding initiated thereunder being G.R. Case No. 327 of 2017 pending before the Learned Additional Chief Judicial Magistrate, Hooghly.

2. The factual matrix, leading to filing of the instant case, is that suddenly on 13th February, 2017, the Officers of Chinsurah Police Station entered into the petitioner's brickfield and made a seizure without any prior information to the petitioner in respect of the following items:

- a) Two earth removers kept in the brickfield having numbers 01S1-05231Q and 5540A387 of which one Vishal Pratap Singh, being the son of the petitioner

and Smt. Samapti Singh being the wife of the petitioner are the owners.

b) Six Trucks having Registration Numbers WB – 156701, WB – 417447, WB – 110387, WB – 399647, WB – 41B 0338 and WB – 41B 0400. The petitioner is not the owner of any of the said Trucks.

2a. The officers have seized and kept those seized items under the Zimmadar, namely, Ram Chandra Banerjee and a copy of the seizure list was given to the petitioner. The said trucks were empty. No seizure was made to any ordinary earth or bricks earth.

2b. Later, the petitioner came to know that the FIR was actually initiated against the petitioner by the Inspector – in - Charge of Chinsurah Police Station on the basis of a complaint made by the Block Land and Land Reforms Officer, Chinsurah - Mogra Block and same was registered as Chinsurah P.S. Case No. 87/17 dated 13.02.2017 under Sections 379/411/414 of the Indian Penal Code, 1860 read with Rule 50 of the West Bengal Minor Minerals Concessions Rules, 2016, Rule 3 of the West Bengal Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002 and Section 21(2) of the Mines and Minerals (Development and Regulation) Act, 1957. On the basis of said First Information Report,

a proceeding being G.R. Case No. 327 of 2017 has been initiated before the Court of Learned Additional Chief Judicial Magistrate, Hooghly against the present petitioner without any illegal acts or commission of offences or violation of any provisions of the Acts mentioned as aforesaid.

2c. It is the contention of the petitioner that he was an active member of Bengal Brickfield Owners' Association, who always raised objection against illegal actions and demands of the District Mining Authorities in various districts of West Bengal with regard to brickfield operation, as such, the District Mining Authority in the district of Hooghly had become very much vindictive and hostile to the petitioner and are intentionally causing harassment to the petitioner deliberately in a collusive and mala fide manner for several years in the following manner:-

- (i) That although the brickfield of the petitioner is authorized and is an old one running for 100 years and although the petitioner had constructed adequate Pollution Control System and constructed fixed chimney, but the District Authorities, with a clear, mala fide and vindictive intention, did not issue consent to operate peacefully the brick field to the

petitioner, for which the petitioner had to move a writ application before this Hon'ble Court being W.P. No. 28775 (W) of 2008 and only after passing the order by the Hon'ble High Court, the consent was given to operate brickfield.

(ii) That even after having valid consent to operate, the name of the petitioner was falsely impleaded before the National Green Tribunal in the proceeding being O.A. No. 32/2014/EZ as an illegal brickfield operator with mala fide and vindictive attitude and closure order was issued by the Learned Tribunal against petitioner's business. The petitioner had to enter appearance in the said proceeding by engagement of learned advocate and only after the production of the consent to operate, the petitioner was granted liberty to operate brickfield. Consequently, the petitioner had to suffer huge financial loss for closure of business during the business season.

(iii) That after passing of the orders by His Lordship the then Hon'ble Justice Sanjib Banerjee in the two writ applications filed by the petitioner, being W.P. No.

37821 (W) of 2013 and W.P. No. 30030 (W) of 2015, the District Land and Land Reforms Officer, Hooghly, in order to frustrate the said orders and to deprive the petitioner from the benefit of the said interim protections with a clear mala fide intention, had stated to withhold the petitioner's application for consent to operate in a coercive and illegal manner and opined that no consent to operate would be given unless the petitioner withdraws the said writ applications and pays the entire demand with interest for which the petitioner was compelled to move the Court for necessary order.

2d. In addition, the petitioner is the lawful owner of the Brickfield, namely, M/s. Keota Brickfield Private Limited situated at Mouza – Keota, J.L. No. 7, under Chinsurah Police Station, District – Hooghly. The said brickfield is very old and operating on and from 1916 and the said brickfield was regularized and authorised by acceptance of royalty on bricks earth under the Mines and Minerals (Development and Regulation) Act, 1957. By such long operation of brickfield, the concerned plots have also been converted into mines business and same is governed by the aforesaid Act of 1957.

2e. The Department of Land and Land Reforms, Government of West Bengal, by Circular dated 29.09.2000 and the Corrigendum to the said Circular dated 02.02.2001, had granted regularization to all the brickfields which came into operation on or before 01.09.2000 and in terms of the said Circular, the brickfield of the petitioner stands regularized.

2f. The petitioner is a Member of the Bengal Brickfield Owners' Association, is incorporated under the Companies Act, 1913 and as such, the petitioner is entitled to the benefits of the Judgments and Orders obtained by the said association from the Hon'ble High Court at Calcutta in the following manner: -

“(i) That the writ application being C.O. No. 4760 (W) of 1991 (Bengal Brickfield Owners' Association and Others – Versus – The State of West Bengal & Ors.) was moved before this Hon'ble Court by the said association and by the Judgment and Order dated 19.07.2002, His Lordship the then Hon'ble Justice Amitava Lala was pleased, inter alia, to dispose of the writ application by directing the State Authorities not to disturb the carrying on of usual business of the petitioners upon payment of royalty.

(ii) That another writ application was moved being W.P. No. 992 (W) of 2003 by the said Association before this Hon'ble Court challenging, inter alia, the enhancement of rate of royalty during the pendency of the appeal before the said Hon'ble Court being FMA No. 420 of 2004 involving the same subject-matter and by Judgment and Order dated 16.01.2003, His Lordship the then Hon'ble Justice Amitava Lala was pleased, inter alia, to allow the writ application by allowing the petitioners to carry on brickfield operation upon payment of royalty in terms of the Judgment and Order dated 19.07.2002 passed in C.O. No. 4760 (W) of 1991. Both the said Judgments and Orders are still valid and operative and the petitioner is entitled to the benefit of the same."

2g. It is further contention of the petitioner that fixed chimney has been constructed in the site in appropriate height in terms of the guidelines of the West Bengal Pollution Control Board and the said Board granted consent to operate petitioner's brickfield on earlier occasions. The petitioner duly applied for necessary Environmental clearance and petitioner's mining plan has duly been approved for the said purpose. The matter is pending before the concerned authority for the final grant of Environmental clearance.

2h. During the year 2013 in flagrant violation of the aforesaid Judgments dated 19.07.2002 and 16.01.2006, the District Mining

Authority claimed higher price on brick earth for running brickfield from the petitioner. Challenging such claim, the petitioner moved a writ application before this Hon'ble High Court being W.P. No. 37821 (W) of 2013 and by order dated 08.01.2014, His Lordship the then Hon'ble Justice Sanjib Banerjee was pleased, inter alia, to direct that subject to the petitioner's putting in an amount of Rs. 5 Lakhs, by way of fixed deposit in any nationalized Bank and holding the same free from all encumbrances, the State will not interfere with petitioner's business, if the business is conducted in accordance with law. In compliance with the said order, the petitioner made a fixed deposit on 15.01.2014. The said writ application is still pending before this Hon'ble Court and the said order is still in force.

2i. Thereafter, again a Proceeding was initiated by the District Mining Authority against the petitioner on alleged ground of demand of land revenue on the plots of brickfield. Challenging the said demand and proceeding, the petitioner moved another writ application before this Hon'ble Court being W.P. No. 30030 (W) of 2015 and by order dated 23.12.2015, His Lordship the then Hon'ble Justice Sanjib Banerjee was pleased to pass interim order directing that the petitioner would be permitted to deposit 50% of the claim amount by way of fixed deposit to any nationalized bank within a

fortnight free from all encumbrances and in compliance of the said order, the petitioner duly deposited the amount in fixed deposit and served copy of the certificate of the same to the learned Advocate for the State.

2j. The District Land and Land Reforms Officer, Hooghly, after filing of petitioner's application for consent to operate, deliberately started to show inaction to dispose of the application of the petitioner on the alleged ground that as the petitioner had moved before this Hon'ble High Court against the said officer's demands, the said officer was having parallel power to withdraw such application and opined that unless the aforesaid writ applications being W.P. No. 37821 (W) of 2013 and W.P. No. 30030 (W) of 2015 were withdrawn and all payments were made in terms of the aforesaid demands, petitioner's application would not be allowed. Due to such deliberate mala fide intention of the District Mining Authority, the petitioner had to appear in a proceeding before the National Green Tribunal being O.A. No. 133/2016/EZ and obtain necessary order.

2k. During the business year 2016-2017, the petitioner deposited advance royalty on brick earth which is a valid deposit under the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules made thereunder and in terms of the aforesaid

Judgments and Orders obtained by petitioner's association, the petitioner is entitled to deposit the same and to operate brickfield.

21. But, on 13.02.2017, the officers of Chinsurah Police Station entered petitioner's brickfield and seized two earth removers and six trucks as aforesaid, although not belonged to the petitioner and registered a frivolous case being Chinsurah P.S. Case No. 87/17 dated 13.02.2017 under Sections 379/411/414 of the Indian Penal Code read with Rule 50 of the West Bengal Minor Minerals Concessions Rules, 2016, Rule 3 of the West Bengal Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002 and Section 21(2) of the Mines and Minerals (Development and Regulation) Act, 1957 against the petitioner. The same is totally illegal, unsustainable and unjustified because no offence is disclosed against the petitioner and, therefore, violated the Section 78 of the IPC. As such, the entire proceeding is liable to be quashed in terms of the aforesaid Judgments and Orders by which the petitioner is entitled to operate brickfield. Petitioner is paying royalty every year regularly including the business year of 2016-2017 for operating brick field. Hence, the petitioner has come up before this Hon'ble High Court by filing the aforesaid Criminal Revisional application and same has come up before this Bench for its disposal.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. Learned Advocate appearing on behalf of the petitioner submitted that there was no basis for initiation of the criminal case and the same ought not to have been initiated and continued further rather it ought to have been dropped in view of the said solemn orders passed by the Hon'ble High Court time to time.

3a. It is further submitted that the Hon'ble High Court has allowed the petitioner to extract earth upon payment of royalty, cess etc. Such payment, however, shall be without prejudiced to the rights and contentions of the parties and will abide by the result of the writ petition. Upon payment of royalty, extraction of earth would have been allowed.

3b. In view of the said orders, the petitioner is entitled to extract brick earth upon payment of royalty. So, question of illegal extraction of the earth brick and/or theft of minerals is out and out false. Even knowing the facts of pendency of the writ petitions and aforesaid orders passed time to time, the BL & LRO was not justified in starting a criminal case against the petitioner either under the provisions of West Bengal Minor and Minerals Rules or Indian Penal Code. But, it was done only to harass the petitioner and with an ulterior motive. Accordingly, the entire proceeding is liable to be quashed. The FIR,

Charge Sheet and entire proceedings are also liable to be quashed otherwise it would be a gross abuse of process of law for which the petitioner would be greatly prejudiced.

3c. Finally, it is submitted that as per demand made by the District Land and Land Reforms Officer by issuance of Memo No. IX-08/BF-84/6162/MM dated 14.09.2017, the petitioner has paid land revenue, royalty and cess in respect of the petitioner's brickfield for the year 2016-2017 on instalments on 14.09.2017, 20.09.2017, 13.11.2017 and 23.11.2017. The Block Land and Land Reforms Officer, Chinsurah - Mogra, Hooghly by Office Memo No. 1125/Mog Chin/17 dated 22.11.2017 issued a 'No Due Certificate' in favour of the petitioner's brickfield business. Despite the said fact, the Investigating Officer of the case submitted the Charge Sheet being Chinsurah Police Station Charge Sheet No. 262/2018 dated 25.09.2018 u/s 379/411/414 of IPC and Rules 50 of the Minor Mineral Concession Rules 2016, Section 21(2) of Mines and Minerals Act, 1957 and Rule 30 of W.B. Minerals Rules. Same is liable to be quashed for securing ends of justice.

SUBMISSION ON BEHALF OF THE STATE:

4. Per contra, learned counsel appearing on behalf of the State strongly objected the prayer of the petitioner and submitted that the

petitioner has paid land revenue, royalty and cess in respect of the petitioner's brickfield for the year 2016-2017 in instalments on 14.09.2017, 20.09.2017, 13.11.2017 and 23.11.2017 after initiation of criminal proceedings. Accordingly, this Criminal Revisional application has devoid of merit and liable to be dismissed. However, learned counsel appearing on behalf of the State has filed a report and admitted that the petitioner has paid all the revenue, royalty and cess in respect of the petitioner's brickfield for the year 2016-2017 in instalments on the basis of report submitted before this Court.

DISCUSSIONS AND FINDINGS BY THIS COURT:

5. Heard the arguments of the rival parties and upon perusal of the materials on record and the report submitted by the learned counsel appearing on behalf of the State, it appears that the District Land and Land Reforms Officer by issuing Memo No. IX-08/BF-84/6162/MM dated 14.09.2017, demanded land revenue, royalty and cess in respect of the petitioner's brickfield for the year 2016-2017. Petitioner has paid the entire demand of land revenue, royalty and cess in instalments in terms of the demands. The Block Land and Land Reforms Officer, Chinsurah - Mogra, Hooghly by Office Memo No. 1125/Mog Chin/17 dated 22.11.2017 issued a 'No Due Certificate' in favour of the petitioner in respect of the petitioner's

brickfield business. Despite the said fact, the Investigating Officer of the case submitted Charge Sheet being Chinsurah Police Station Charge Sheet No. 262/2018 dated 25.09.2018 u/s 379/411/414 of IPC and Rules 50 of the Minor Mineral Concession Rules 2016, Section 21(2) of Mines and Minerals Act, 1957 and Rule 30 of W.B. Minerals Rules is not justified and unstainable in law.

6. It is not denied by the State that land revenue, royalties and cess have not been paid by the petitioner. The report also indicates, the Additional District Magistrate and District Land and Land Reforms Officer, Hooghly gave a point-wise reply to the Officer - in - Charge, Chinsurah Police Station, Hooghly in the following manner: -

“i) In connection with the first query, it is ascertained that on Dineshwar Singh has paid the amount of Rs. 4,99,949/- as land revenue, cess and surcharges on 21.09.2017 through Bank Draft. On 20.09.2017, M/s. Keota Brick Field Pvt. Ltd. had submitted Rs. 300051/- as first instalment of royalty & cess through Demand Draft vide receipt no. 11/39 dated 20.09.2017. Authenticated copies of the same are annexed herewith for ready reference.

ii) In connection with the query no. 2, M/s. Keota Brick Field Pvt. Ltd. had submitted an amount of Rs. 4,10,304/- as 2nd instalment of royalty & cess, through Demand Draft vide receipt no. 1/45 dated 13.10.2017.

Authenticated copy of the Duplicate Carbon Book is attached herewith.

iii) In connection with the 3rd query, M/s. Keota Brick Field Pvt. Ltd. once again submitted Rs. 400000/- as 3rd instalment of royalty & cess through Demand Draft vide receipt no. 13/47 dated 23.11.2017. Authenticated copy of receipt no. 13/47 is annexed.

iv) In connection with your last query it is stated that, the purpose of payments has already been described in the annexed copies. So, no further elaboration is required for the same.”

7. From the reply of the Additional District Magistrate and District Land and Land Reforms Officer, Hooghly to the Investigating Officer, it is apparent that the petitioner has paid the land revenue, cess and surcharges prior to filing of the Charge Sheet but despite the said fact, the Investigating Officer filed charge sheet against the petitioner though it is clear that there is no dues in respect of extraction of earth. No Due Certificate in favour of the petitioner's brickfield business was also issued.

8. Furthermore, this Court does not find any ingredients which require to constitute offence under Sections 379/411/414 of the IPC upon perusal of the material available on the record and has not been attributed any particular role against the present petitioner in the

said impugned FIR. No particulars were also given with regard to the theft of any earth or brick earth to constitute the offence punishable under Sections 379/411/414 of the IPC.

9. Considering the said facts, the offence punishable under Sections 379/411/414 of the IPC has no manner and is not applicable against the present petitioner because from the seizure list it reveals two earth removers and six trucks were only seized. No other articles like extraction of the earth or brick earth were seized from the brick field. Mere seizure of earth removers and empty trucks, kept in the brickfield, does not establish or constitute any offence of illegal extraction of brick earth. Rather the petitioner is not the owner of the seized vehicles.

10. It is not the case of the concerned Authority that he has violated any terms and conditions or has not paid any royalty to the Government for such extraction of brick earth.

11. In view of the above facts and circumstances, the First Information Report being Chinsurah P.S. Case No. 87/17 dated 13.02.2017 under Sections 379/411/414 of the Indian Penal Code read with Rule 50 of the West Bengal Minor Minerals Concessions Rules, 2016, Rule 3 of the West Bengal Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002 and Section 21(2) of

the Mines and Minerals (Development and Regulation) Act, 1957 and the proceeding being G.R. Case No. 327 of 2017 appears illegal, frivolous and without any justification. The case of the petitioner is very clear and specific. He is extracting the earth bricks in view of the orders passed by the Hon'ble High Court time to time and those writ petitions are still pending. He also paid land revenue, royalty and cess as demanded by the authority and same has been admitted and endorsed by the concerned Authority.

12. In the above backgrounds, the complaint filed by the Block Land and Land Reforms Officer, Chinsurah - Mogra Block is bereft of any justification or merits. The allegation of unauthorised extraction and removal of minor and minerals by the petitioner from the brickfield situated at Mouza – Keota, J.L. No. 7, Sheet Nos. 17 & 18 consisting of L.R. Plot No. 8538, 8541, 8542, 8628, 8629, 8633, 8782 and 8781 under Chinsurah Police Station, District – Hooghly without any prior permission from the appropriate authority appears vague and incomplete. When the petitioner paid the entire land revenue, royalty and cess as per the demand, it does not manifest illegal extraction of earth by the petitioner. The payment of the said land revenue, royalty and cess is admitted by the State and No Dues Certificate for the year 2016-2017 has been issued by the Authority.

The ingredients of Sections 379/411/414 are also missing. Accordingly, if the proceeding is continued against the present petitioner that would be definitely a sheer abuse of process of law and to secure the ends of justice, this Court is not powerless to utilize inherent jurisdiction to interfere with the said proceeding.

13. We should not forget at this moment the well-settled law declared by the Hon'ble Supreme Court in the case of **State of Haryana & Ors. vs. Bhajanlal & Ors.**¹ which has laid down the basic points for consideration pursuant to which a complaint may be entertained in accordance with law before a Court of law. The Court has narrated down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure may be espoused. Relevant portion thereof may beneficially be quoted herein below: -

“102. This Court in the backdrop of interpretation of various relevant provisions of CrPC under Chapter XIV 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be

¹ AIR 1992 SUPREME COURT 604 : 1992 Supp. (1) Supreme Court Cases 335

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

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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 Act concerned (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 Act concerned, 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.”

14. In the strength of above discussions made by this Court and in view of observation made by the Hon’ble Supreme Court in the above cited judgment, this Court fully satisfies that this case falls in the Categories mentioned in (1), (5) and (7) above.

15. Accordingly, **CRR No. 637 of 2017** is **allowed**. Connected applications, if any, are also, thus, disposed of.

16. Consequently, the proceeding being Chinsurah P.S. Case No. 87/17 dated 13.02.2017 under Sections 379/411/414 of the Indian Penal Code read with Rule 50 of the West Bengal Minor Minerals Concessions Rules, 2016, Rule 3 of the West Bengal Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002 and Section 21(2) of the Mines and Minerals (Development and Regulation) Act, 1957 corresponding to G.R. Case No. 327 of 2017 are hereby quashed insofar as the petitioner is concerned and all orders passed thereof in the said proceeding are also, thus, set aside.

17. Let a copy of this Judgment be sent to the Learned Trial Court for information.

18. Case Diary, if any, is to be returned to the learned counsel for the State.

19. Interim order, if any, stands vacated.

20. Parties will act on the server copies of this Judgment uploaded from the official website of this Court.

21. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)