

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2034 of 2019
With
CRAN 2 of 2020 (Old CRAN 660 of 2020)

Naba Kumar Mondal
Versus
State of West Bengal & Others

For the State : Ms. Debjani Sahu, Adv.

Heard on : 28.03.2024

Judgment on : 19.04.2024

Ajay Kumar Gupta, J:

1. By filing this revisional application under Section 482 of the Code of Criminal Procedure, 1973, the petitioner/accused sought for quashing of proceeding being G.R. Case No. 1030 of 2019 corresponding to Md. Bazar Police Station Case No. 216 of 2019

dated 30.07.2019 under Sections 379/411/413/414/120B of Indian Penal Code and Section 21 of Mines & Minerals Act, 1957 read with Section 21 of West Bengal Mines & Minerals Act, 2002 & Section 3 of Prevention of Damages of Public Property Act pending before the Learned Court of Additional Chief Judicial Magistrate, Suri, Birbhum.

2. The brief facts of the instant case are relevant for the purpose of disposal of the instant case as under:

2a. The petitioner was a lessee under the West Bengal Minor Minerals (Auction) Rules, 2016 after being successful bidder for grant of mining lease vide memo no. M&M/4441/E-Auction/DL&LRO/2016 dated 27.10.2016 floated by the concerned District Land and Land Reforms Officer, Birbhum, Suri and, thereafter, deposited the requisite bid amount as a successful bidder. After satisfaction of payment of full and final bid amount, the Governor of West Bengal executed a mining lease for minor minerals i.e. sand on 3rd August, 2017 for a period of five years and the area of the lease situated at mouza Baidyapur, J.L. No. 023 under Sainthia P.S. District – Birbhum on plot no. 074(P), 075(P) covering an area 9.31 acres on the riverbed of Mayurakshi being depicted as SAND BLOCK No. Bir/Sainthia/Baidyapur/033/2016 in the NIT/NIA no. Bir/10-65/2016 uploaded vide memo no. M&M/4441/E-

Auction/DL& LRO(B)/2016 dated 27.10.2016 of the office of the ADM and DL& LRO, Birbhum within Registration district of Birbhum bearing code Nos. 03 containing an area of 9.31 acres.

2b. It is further case of the petitioner that the petitioner time to time deposited all sort of requisites and, thereafter, lifted the sand from the riverbed and kept it in the stockyard, approved by the competent authority unless and until sale challans are issued by the authority, the petitioner was/is not entitled to sell the same and there was a bar for lifting the sand during monsoon season in view of the relevant Government circular. In spite of the fulfilment of all conditions by the petitioner, the BL&LRO, Suri lodged a complaint alleging, inter alia, that the petitioner is a holder of long term lease but the stock, as kept in the stockyard, has been found excess though the allegations are completely false and fabricated. Actually, the petitioner is entitled to lifting the sand for five years as per the deed of mining lease for minor minerals after having fulfilment of all criteria. So, question of theft by the petitioner does not arise at all. As such, continuation of First Information Report and proceeding thereafter is nothing but an abuse of process of law and to ensure the end of justice, this Court can exercise inherent power under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the said false complaint.

3. Hence, the criminal revisional application has come up before this Bench for disposal.

4. Nobody appears on behalf of the petitioner on call and even on earlier occasions, no one represented the petitioner. No accommodation was sought. This Court has given several opportunities to the petitioner. Despite of the said facts, no one represented the petitioner.

SUBMISSION ON BEHALF OF THE STATE:

5. On the other hand, learned counsel appearing on behalf of the State produced the case diary and memo of evidence and submitted that the petitioner/accused person was a lessee and he was given permission to extract the sand as per the mining lease for minor minerals with certain terms and conditions. There was a limitation for extracting the sand from the riverbed of Mayurakshi. There was also restriction about the maximum height of the stock from the ground. It should not be more than 4 ft. or the boundary wall whichever is less. A clearance of 2 ft. should be maintained from the boundary wall inside the stockyard. Despite of such restriction, the petitioner herein violated the terms and conditions of the mining lease. During joint enquiry of the representative of BDO, Md. Bazar, Birbhum and the representative of BL&LRO, Md. Bazar, Birbhum,

they found (1) Bin card is not displayed showing the quantity of stock at the beginning of the day, which violates the clause (5) of the permission letter, (2) The temporary or permanent boundary wall has not been constructed surrounding the stockyard which violates the clause (6) of the permission letter and (3) The height of the stockyard from the ground is found 25 ft., which exceeds in 21 ft. of permitted height 4 ft.

5a. In view of the contravention and violation of the clauses, a written complaint was lodged by the then Block Land & Land Reform Officer, Md. Bazar, Birbhum and on the basis of said written complaint, a case was registered as Md. Bazar Police Station Case No. 216/19 dated 30.07.2019 under Sections 379/411/413/414/120B of IPC, Section 21 Mines & Minerals Act, 1957 read with Section 33 of West Bengal Mines and Minerals Act, 2002 & Section 3 of Prevention of Damages of Public Property Act. After thorough investigation, the investigating officer visited the PO, prepared rough sketch map of the PO with its index and examined available witnesses and recorded their statements under Section 161 of the CrPC and finally after conclusion of investigation, a prima facie case has been established against the FIR named accused i.e. petitioner herein vide Charge Sheet No. 221/20 dated 25.12.2020 u/s 379/411/414 IPC and Section 21 of Mines and Minerals Act. As the petitioner was

absconder, a prayer for issuing W/A was made before the learned Magistrate. Under such circumstances, this case is liable to be dismissed.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

6. Having heard the submission of the learned counsel appearing on behalf of the State and on perusal of the case diary as well as application and annexures thereto, this Court finds the petitioner was a lessee and he was granted a lease for extracting sand from the area mention above for a period of five years after having fulfilment of all criteria. The said mining lease deed was executed in favour of the petitioner with certain terms and conditions and also imposed some restriction to such extraction and storing of such sand with a limited permission as under:

***i.** A Bin Card is to be displayed showing the stock at the beginning of the day.*

***ii.** The stock should be reserved within an enclosure made of temporary or permanent boundary wall.*

***iii.** Maximum height of the stock from the ground should not be more than 4 feet or the boundary wall, whichever is less. A clearance of 2 ft. should be maintained from the boundary wall inside the stockyard.*

iv. The LTML Holder and all his workers shall be bound to allow and cooperate with the Authorized Officer whenever he visits the stockyard for inspection of the minerals kept therein with reference to the entries maintained in the bin card/registers. Any obstruction to such inspection shall be treated as an obstruction to the duties of a public servant and shall be subject to penal action.

v. After inspecting/checking of minerals, the Authorised Officer shall record the visit/inspection on the relevant pages of the stock register.

vi. The Authorised Officer is empowered to seize any mineral the record of which is not found in the stock register. Any mineral confiscated by the Authorised Officer shall be liable to be confiscated by an order of the competent court of law in taking cognizance of the offence and shall be disposed of in accordance with the direction/s of the said court.

vii. There was also a condition to submit monthly account by the lessee for each month in respect of raising, stock, sale, dispatch, local consumption, royalty and rent due and payment shall be completed within fifteen days of the month following and true copy of each duly signed by the Lessee/Lessees or his/their/its authorized agent shall be sent to (1) the Chief Mining Officer, Court Road, P.O. Asansol, (2) the Mining Officer concerned, (3) Commerce and Industries Department, State Government and (4) District Authority within seven

days' thereafter, (5) Executive Engineer of I&W Deptt., (6) Revenue Officer of I&W Deptt.

viii. *Lessee shall also give an authority to extract and dispatch minimum 85500 cubic meters per Year of SAND (name of mineral) from the leasehold area per annum and depth of extraction of the riverbed materials shall be specified by the Executive Engineer or any other Engineer officers authorised by him, but it shall be kept restricted to 3.0 m from the existing bed level in the quarry/mining area or average ruling water level in the river or drainage channel or irrigation canal, whichever is less. The execution of the said lease deed executed on 3rd August, 2017 before the Office of District Sub-Registrar, Suri, Birbhum.”*

7. Upon perusal of such aforesaid terms, conditions and clauses, this Court finds during joint inspection by the representative of BDO and representative of the BL&LRO on 30.07.2019 found that the LTML Holder Naba Kumar Mondal, the petitioner herein violated the clauses of permission letter for stock, sale and exhibit for sale of minor mineral (sand), which was issued by the Additional District Magistrate & District Land & Land Reforms Officer, Birbhum vide reference No. 112 on 21.06.2019. Accordingly, the BL&LRO made a complaint against the petitioner with regard to the violation and excess stock of sand beyond the permissible limit in the stockyard

resulted in registration of a Md. Bazar P.S. Case No. 216/19 dated 30.07.2019 under Sections 379/411/414 IPC & Section 21 of Mines and Minerals Act against the Petitioner and after investigation, a prima facie case has been established against the present petitioner vide Charge Sheet No. 221/20 dated 25.12.2020 u/s 379/411/414 IPC and Section 21 of Mines and Minerals Act.

8. Section 21 of Mines and Minerals (Development and Regulation) Act, 1957 says as under:

“21. Penalties. — (1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order

of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.

Explanation. —On and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021, the expression “raising, transporting or causing to raise or transport any mineral without any lawful authority” occurring in this section, shall mean raising, transporting or causing to raise or transport any mineral by a person without prospecting licence, mining lease or composite licence [exploration licence] or in contravention of the rules made under section 23C.”

Section 4 of Mines and Minerals (Development and Regulation) Act, 1957 says as under:

“4. Prospecting or mining operations to be under licence or lease. - (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government Company within the meaning of clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), and any other entities including private entities that may be notified for this purpose, subject to such conditions as may be specified by the Central Government:

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.

(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(2).....

(3).....”

- 9.** Upon perusal of all the above provisions and lease deed, it reveals that the prima facie the petitioner has violated the terms and

conditions as well as clauses of permission letter. The FIR lodged against the petitioner discloses offences. Those are cognizable in nature. Petitioner has not displayed a Bin Card showing the quantity of stock at the beginning of the day, which violates the clause (5) of the said permission letter, the temporary or permanent boundary wall has not been constructed surrounding the stockyard, which violates the clause (6) of the said permission letter and further found the height of the stock 25 ft. from the ground floor, which exceeds in 21 ft. of permitted height i.e. 4 ft. Learned Court below also took cognizance against the present petitioner after considering the materials available in the case diary. This Court also finds there are sufficient prima facie materials against the petitioner.

10. In view of the above facts and circumstances, this Court does not find any merit in this revisional application.

11. Accordingly, **CRR 2034 of 2019** is, thus, dismissed without order as to costs. Consequently, **CRAN 2 of 2020 (Old CRAN 660 of 2020)** is also, thus, disposed of.

12. Case Diary, if any, is to be returned to the learned Advocate for the State.

13. Let a copy of this judgment and order be sent to the learned Court below for information and for taking necessary action in accordance with law.

14. Interim order, if any, stands vacated.

15. Parties shall act on the server copies of this order uploaded on the website of this Court.

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

(Ajay Kumar Gupta, J)

P. Adak (P.A.)