

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2775 of 2012

Kanai Nayek
Versus
The State of West Bengal & Another

For the Petitioner : Mr. Somesh Panja, Adv.

For the State : Md. Anwar Hossain, Adv.

Heard on : 26.06.2024

Judgment on : 03.09.2024

Ajay Kumar Gupta, J:

1. By filing this Criminal Revisional application, petitioner herein has prayed for quashing of the proceeding being Arambag P.S. Case No. 90/2007 dated 04.05.2007 under Section 22 of the Mines

and Minerals (Development and Regulation) Act, 1957 read with Sections 379/411 of the Indian Penal Code corresponding to G.R. 190/2007 pending before the Court of the Learned Judicial Magistrate, Additional Court, Arambag, District- Hooghly and setting aside the order dated 20.02.2010 passed by the learned Judicial Magistrate, 1st Class, Additional Court thereby framed charge under Sections 379/411 of IPC against the accused/petitioner herein.

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

2a. On 4th May, 2007, de-facto complainant/opposite party no. 2 lodged a complaint against the petitioner alleging therein, *inter alia*, that the accused person extracted and removed a considerable amount of Brick Earth which is a Mineral as defined in Clause (c) of Section 3 of the Mines and Minerals (Development and Regulation) Act, 1957 without holding any Quarry Permit as required under the Provision of Section 27 in Schedule IV of West Bengal Rules, 2002 and also in contravention of the provision of Rule 4 of the Mines and Minerals (Development and Regulation) Act, 1957 as amended in 2002 and the Provision of Rules 4 (1) of the said Rules and Rule 3 of the West Bengal in the year 2006-2007. In spite of the West Bengal Minerals Prevention of Illegal Mining, Transportation and Storage

Rules, 2002, the accused person has still been extracting and removing Brick Earth from the plots of Mouza – Raghunathpur, J.L. No. 50, P.S. – Arambagh. Consequently, the accused person, thus, committed theft of the minor minerals and thereby he is liable to be prosecuted under Rule 33 of the West Bengal Minor Minerals Rules, 2002 read with Section 21 and its related sub-sections of Mines and Minerals (Development and Regulation) Act, 1957. Such unauthorised and illegal act of the accused person is a cognizable offence under Rule 33 and its related sub-sections and Section 22 of Mines and Minerals (Development and Regulation) Act, 1957 read with Sections 379/411 of the Indian Penal Code resulting in registration of Arambag P.S. Case No. 90/2007 dated 04.05.2007 Sections 379/411 of the Indian Penal Code. Subsequently, after conclusion of investigation, the Investigating Officer of this case has submitted a charge sheet being C.S. No. 102 dated 20.05.2008 under Section 22 of Mines and Minerals (Development and Regulation) Act, 1957 read with Sections 379/411 of the Indian Penal Code against the petitioner though the case of the petitioner is different.

2b. The contention of the petitioner is that the present petitioner is the proprietor of M/s. Sun Brick Field, situated within the village Raghunathpur, P.O. & P.S. Arambagh, District Hooghly, who had

filed and moved a writ petition before the Hon'ble High Court at Calcutta along with other brick field owners being W.P. No. 7082 (W) of 2009 challenging the illegal claim of Royalty from them from the end of the said B.L. & L.R.O. On 21.04.2009, after hearing the learned counsels for the parties, His Lordship the then Hon'ble Justice Kalyan Jyoti Sengupta was pleased to pass an order, *inter alia*, directing filing of affidavit upon both the parties within a stipulated period and also passed the interim order to the following effect: -

“In the meantime, there will be an interim order to the effect that the petitioner will be entitled to extract earth, upon payment of royalty at the rate of Rs. 25/- per cubic feet. Such payment however, shall be without prejudice 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 will be allowed to be done.”

2c. The said writ petition was moved with contentions that brick earth was cutting by the petitioner as such his prayer was for quarry permit and for acceptance of royalty for the said purpose from him, of course at the accepted rate of royalty as decided by this Hon'ble Court in other so many similar matters moved earlier before the Hon'ble Court. The said writ petitions are still pending.

2d. The concerned Block Land & Land Reforms Officer being the respondent no. 5 has not filed affidavit-in-opposition even as yet. Hence, the said Respondent No. 5 of the said writ petition being W.P. No. 7082 (W) of 2009 was not justified in filing the Criminal Case against the petitioner and the respondent no. 7 of the said writ petition being W.P. No. 7082 (W) of 2009 was also not justified in starting the said criminal case against the present petitioner.

2e. Another writ petition being No. W.P. No. 6328 (w) of 2012 (Rajib Nayak & Ors -vs- The State of West Bengal & ors) was moved in this Hon'ble High Court challenging the illegality of notification No.809/CI/MM/84/11 dated 01.12.2011 fixing rate of Royalty on Brick earth @ 51/- per hundred Cft. The said writ petition was heard by the then Hon'ble Justice Soumitra Pal and after hearing the parties on 10.04.2012, His Lordship directed to file affidavit by 15.06.2012 and 29.06.2012 respectively. His Lordship was further pleased to direct that there will be an interim order to be effect that the Writ petitioner will be entitled to extract earth upon payment of royalty at the rate of Rs. 35/- only per Cft. Without prejudice to the rights and contention of the parties and subject to the further order that might be passed in the said writ petition. In view of the aforesaid directions there was no scope for initiating any proceeding under

Rule 22 of the West Bengal Minor Mineral Rules and there was no justification of initiating the impugned criminal case, the FIR and charge sheet thereof are both illegal and without justification. Hence, the petitioner approached before this Court with a prayer for quashing of the entire proceeding as the proceeding is sheer abuse of process of law and/or miscarriage of justice when there is an Interim Injunction Order passed by the Hon'ble High Court.

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 said criminal case and the same ought not to have been initiated and continued further rather ought to have been dropped in view of the said solemn order passed by the Hon'ble High Court on 21.04.2009 and 10.04.2012.

3a. In the said interim order, the Hon'ble High Court has allowed the petitioner to extract earth upon payment of royalty at the rate fixed by the Hon'ble High Court. 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 and same is legal.

3b. In view of the said order, the petitioner is entitled to extract brick earth upon payment of royalty fixed by the Hon'ble High Court. So, question of illegal extraction of the earth brick and/or theft of mineral is out and out false. Even knowing the facts of pendency of the writ petitions and aforesaid injunction order, the BL & LRO was not justified in starting 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 ill motive. Accordingly, the entire proceeding is liable to be quashed otherwise it would be a sheer abuse of process of law for which the petitioner would be greatly sufferer.

SUBMISSION ON BEHALF OF THE STATE:

4. Per contra, learned counsel appearing on behalf of the State objected the prayer of the petitioner and submitted that the petitioner had extracted and removed considerable amount of brick earth from the plots of Mouza – Raghunathpur, J.L. No. 50, Plot no.398 and 399 P.S. – Arambagh, District Hoogly without holding any quarry permit or licence. After culmination of investigation, a prima facie case has been established against the present petitioner. Accordingly, this Criminal Revisional application has devoid of merit and liable to be dismissed.

DISCUSSIONS AND FINDINGS BY THIS COURT:

5. Heard the rival arguments of the parties and on perusal of the materials available in the record as well as case diary, this Court is of the view that the petitioner has approached before this Hon'ble Court praying for quashing of the proceeding on the ground that since the financial year 2000-2001, the petitioner has cleared all the royalties for extracting brick earth and also obtained all the required documents from the concerned authority. The concerned B.L. & L.R.O. has also issued several "No Due Certificates" year after year in favour of the petitioner wherefrom it reveals the BL & LRO, Government of West Bengal had received the advanced royalties from the petitioner year after year till 2023 and receipts have been annexed with the supplementary affidavit filed by the petitioner to show his bona fide that he had paid the royalties of the brick earth for extracting in view of the Hon'ble High Court's interim order. Not only that, the petitioner had Trade Licence issued by the Pradhan of the concerned Gram Panchayat. The petitioner also obtained Pollution Control Board Certificate till 18th July, 2022 for business under the name and style M/s. Sun Brick Field. When there is a Trade Licence, Pollution Control Board Certificate and the receipts of

payment of royalties at the rate fixed by the Hon'ble High Court then it cannot be said extraction of brick earth by the petitioner is without quarry permit or licence.

6. Every financial year, Petitioner has paid royalty to the BL & LRO, Arambagh, Hooghly and the same had been received by the BL & LRO, Arambagh, Hooghly. So, question of without permission the petitioner has extracted the earth brick does not arise. The certificates of payment of royalties are also issued by the BL & LRO, Arambagh, Hooghly. Despite issuing of such certificate for payment of royalties of earth brick of different financial years till 2023, how can he lodge a complaint against the petitioner under Section 22 of Mines and Minerals (Development and Regulation) Act, 1957 read with Sections 379/411 of the Indian Penal Code. It is not the case of the authority that he has violated any terms and conditions or he has not paid any royalty to the Government for such extraction of brick earth.

7. In view of the above facts, the FIR lodged by the BL & LRO against the petitioner for extracting earth brick from the plots of Mouza – Raghunathpur, J.L. No. 50, Plot no. 389 and 399 P.S. – Arambagh, District Hooghly appears illegal and without any justification. The case of the petitioner is very clear and specific. He is extracting the earth brick in view of the order passed by the Hon'ble

High Court in W.P. No. 7082 (W) of 2009 and W.P. No.6328 (w) of 2012 and after paying the royalties as per the direction passed by the Hon'ble High Court. Receipts of the same are also endorsed by the BL & LRO, Arambagh.

8. In the above backgrounds, the present complaint filed by the BL & LRO is bereft of any justification or merits. The ingredients of Sections 379/411 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.

9. We should not forget at this moment the well-settled law declared in the judgment of Hon'ble Supreme Court in **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 below:-

¹ 1992 Supp. (1) Supreme Court Cases 335

“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 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.”

10. 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) and (5) above.

11. Accordingly, **CRR 2775 of 2012** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

12. Consequently, the proceeding being Arambag P.S. Case No. 90/2007 dated 04.05.2007 under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 read with Sections 379/411 of the Indian Penal Code corresponding to G.R. 190/2007 is, thus, quashed insofar as the petitioner is concerned and all orders passed thereof in the said proceeding are also, thus, set aside.

13. Let a copy of this judgment be sent to the learned Court below for information.

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

15. Interim order, if any, stands vacated.

16. Parties will act on the server copies of this order uploaded from the official website of this Court.

17. 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.)