

**IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT JALPAIGURI]
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 263 of 2023

Samim Ahmed

Versus

The State of West Bengal & Another

For the Petitioner : Mr. Subir Ganguly, Adv.
Mr. Abhishek Sarkar, Adv.
Mr. Atanu Basu, Adv.
Mr. Indranuj Dutta, Adv.

For the State : Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Sourav Ganguly, Adv.

Heard on : 22.05.2024

Judgment on : 08.07.2024

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceeding being G.R. Case No. 575 of 2022 pending before the learned Judicial Magistrate, 2nd Court, Jalpaiguri arising out of Rajganj Police Station Case No. 128 of 2022 dated 26.01.2022 under Sections 379/411/34 of the Indian Penal Code, 1860 read with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Section 3 of the Prevention of Damage to Public Property Act, 1984 and all Orders passed therein in connection with the aforesaid proceeding.

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

2a. The petitioner was awarded with a mining lease dated 10.12.2018 by the Government of West Bengal in the Competitive bidding held on 28.09.2018 for Riverbed Occurrences (Sand and Boulders) at Mouza-Pagrangbong (Pokhiryabonga Khasmahal), J.L. No. 17, Police Station- Gorubathan, District – Kalimpong covering an area of 2.50 acres for a period of five years with effect from 10th December, 2018.

2b. On 26.01.2022, petitioner sold the Riverbed Stone Boulders to one Manik Rahman of Gagra, P.S.- Rajganj, District – Jalpaiguri, who had transported the said Riverbed Stone Boulders in a vehicle (truck) bearing registration no. WB 71A 2021 on the same day for which a Road-E-Challan bearing no. 1505711/S/21-22/260120221252/PS dated 26.01.2022 was issued for transportation of sand/riverbed materials, which was valid for the purpose of transporting the aforementioned Riverbed Stone Boulders to the destination.

2c. A written complaint had been lodged suo-moto by one Sri Sadhan Das, Assistant Sub-Inspector of Police, Rajganj Police Station resulting in registration of Rajganj Police Station Case No. 128 of 2022 dated 26.01.2022 under Sections 379/411/34 of the Indian Penal Code, 1860 read with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Section 3 of the Prevention of Damage to Public Property Act, 1984 (corresponding to G.R. Case No. 575 of 2022) against the driver, Ramu Oraon and owner of the vehicle and loaded stones to the effect that on 26.01.2022 at 17.25 hrs, ASI Sadhan Das along with force were performing Naka Checking duty on NH 31D at near Panikouri More under Rajganj PS Jurisdiction then he detained the truck bearing

regd. No. WB71A-2021 which was proceeding towards Siliguri from Jalpaiguri side and found that the said truck is loaded with stone. On interrogation to the driver of the concerned truck disclosed his identity as noted above but on demand he failed to produce any papers documents in support of the loaded stone in his truck. He seized the above noted truck loaded with stone under proper seizure list and arrested him under Section 41 CrPC on proper memo of arrest.

2d. Subsequently, after completion of investigation, a charge sheet has been submitted being Charge Sheet No. 141 of 2022 dated 28.02.2022 under Sections 379/411/34 of the Indian Penal Code, 1860 read with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Section 3 of the Prevention of Damage to Public Property Act, 1984 along with others before the Learned Chief Judicial Magistrate, Jalpaiguri against the petitioner and two others and the Learned Magistrate, vide order dated 30.05.2022, took cognizance of the alleged offence against the present petitioner illegally, arbitrarily and without applying judicious mind. It is the contention of the petitioner that the charge sheet has been submitted in mechanically and without considering the evidence collected during investigation as such entire proceeding is liable to be quashed

otherwise the petitioner would suffer greatly and the continuation of proceeding would be sheer abuse of process of law.

Under the above circumstances, the instant revisional application has come up before this bench for its disposal.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. Mr. Ganguly along with others, learned counsels appearing on behalf of the Petitioner strenuously submitted that the present petitioner is no way connected with the instant case. Despite of the said fact, he has been falsely implicated into this case without proper or effective investigation. The Investigating Officer submitted charge sheet being Charge Sheet No. 141 of 2022 dated 28.02.2022 under Sections 379/411/34 of the Indian Penal Code, 1860 read with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Section 3 of the Prevention of Damage to Public Property Act, 1984. The learned Chief Judicial Magistrate vide order dated 30.05.2022 illegally and arbitrarily took cognizance of the alleged offences though in terms of Notification dated 24.01.1991 being Notification No. 87-C1/GR (D), the concerned Block Land and Land Reforms Officer is appropriate authority to lodge FIR under the Act, 1957. Such provision is not at all maintained while lodging FIR.

Accordingly, the instant proceeding is an abuse of process of law and it liable to be quashed.

3a. It is further submitted that in terms of Rule 62 of the West Bengal Minor and Minerals Rules Concession Rules 2016, the West Bengal Minor and Minerals Rules 2002 has already been repealed with effect from 14th September, 2015. In spite of the fact that Minor and Minerals Rule 2002 has been repealed, the concerned Assistant Sub-Inspector filed this instant case being Rajganj Police Station Case No. 128 of 2022 dated 26.01.2022 under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and West Bengal Minor and Mineral Rules 2002. In terms of the notification dated 24.01.1991 being notification No. 87-C1/GR (D) the concerned Block Land and Land Reforms Officer has been given such power to lodge FIR under the said Act, 1957.

3b. It is further submitted that in terms of Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 no Court shall take any 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 State Government. In terms of the notification dated

24.01.1991 the concerned Block Land and Land Reforms Officer has been given power to lodge the complaint.

3c. The petitioner states that the Hon'ble High Court in a reported decision being CRR 2721 of 2005 (Chhotelal Choudhury & Ors. vs. State of West Bengal) has held that when there is a specific provision for initiation of any criminal proceeding then inclusion of several Sections of the Indian Penal Code together with the provisions of Special Act is illegal because the offences said to have been committed under Indian Penal Code are only ancillary to the offence which in the instant case is said to be an offence punishable under Section 21 of the M.M. Act, 1957 and Section 3 of the PDPP Act, 1984 as per the charge sheet submitted. In view of the facts submitted by the Learned Counsel, entire proceedings and order passed therein are liable to be quashed.

To bolster his submissions, learned counsel appearing on behalf of the petitioner also placed reliance of a judgment passed in ***Ansuman Banerjee & Ors. Vs. The State of West Bengal & Anr.***¹

¹ (2023) 07 Cal CK 0028.

SUBMISSION ON BEHALF OF THE STATE:

4. Learned counsels appearing on behalf of the State places reliance of a judgment passed in ***Kanwar Pal Singh vs. The State of Uttar Pradesh***² to bolster his contention that there is no need to lodge FIR by the Block Land and Land Reforms Officer, when there are other offences of the IPC involved. If the offences are punishable under the IPC together with sections like Section 21 of the West Bengal Mines and Minerals (Development and Regulation) Act, 1957 and 3 of the PDPP Act.

4a. Lastly, learned counsels appearing on behalf of the State submitted on his usual fairness that Petitioner was not an FIR named accused. However, he himself come forward and surrendered before the learned Court below voluntarily and obtained bail. He also prayed for releasing of the said loaded stones claiming that he is the owner of the said materials. Accordingly, IO of this case has implicated him and filed charge sheet.

5. In reply, the learned counsels appearing on behalf of the petitioner submitted that even if he has surrendered or he has claimed the owner of the Riverbed Stone Boulders, he is not an accused. It is obligation of the Investigation officer to investigate the

² (2020) 14 SCC 331

case properly or effectively to ascertain the actual culprits. After investigation, it can be ascertained that who surrendered before the learned court is the actual accused or not but that has not been done by the investigating officer. Charge sheet has been filed only on the basis of table works and mechanical manner. Accordingly, Petitioner came before this Court praying for quashing the proceeding against him.

DISCUSSIONS, ANALYSIS AND CONCLUSION BY THIS COURT:

6. Having heard the submissions of the parties and on perusal of the Case Diary, applications and annexure thereto, this Court finds on 26.01.2022 at 17.25 hrs ASI Sadhan Das of Rajganj PS, District – Jalpaiguri lodged a suo-moto written complaint at PS after producing arrested accused persons, namely, Ramu Oraon (34) (Driver of Vehicle No. WB 71A- 2021) and seized Vehicle (Truck) bearing No. WB 71A 2021 loaded with stone (Mines & Minerals articles) to the effect that on 26.01.2022 around 17.05 hrs while he along with force were performing Naka Checking duty on NH 31D at near Panikouri More under Rajganj PS and while checking, the said truck was detained. On interrogation, driver of the concerned truck disclosed his identity but failed to produce any paper documents in support of the loaded stone in his truck. Accordingly, he seized above noted truck loaded

with stone in proper seizure list and arrested him and took up it for investigation. During investigation, it reveals that Ravi Kumar Mahato is the power of attorney holder of the seized vehicle bearing no. WB 71A 2021 and the present petitioner was a proprietor of seized stone which was loaded in vehicle bearing no. WB 71A 2021. During investigation, he also received an order sheet from Ld. CJM Sadar Court Jalpaiguri vide G.R. No. 575/2022 dated 29.01.2022 and came to learn that Deep Chand Agarwala is the owner of the vehicle bearing no. WB 71A 2021 and Samim Ahmed is the proprietor of stone though actually Samim Ahmed was awarded with a mining lease dated 10.12.2018 by the Government of West Bengal in the Competitive bidding held on 28.09.2018 for Riverbed Occurrences (Sand and Boulders) at Mouza-Pagrangbong (Pokhiryabonga Khasmahal), J.L. No. 17, Police Station- Gorubathan, District – Kalimpong covering an area of 2.50 acres for a period of five years with effect from 10th December, 2018. Said lease period was further extended till 08.06.2025 by the ADM & DLLRO, Kalimpong.

7. Upon further careful perusal of the CD, this Court finds at the time of detaining the vehicle, the police had seized one Road-E-Challan for riverbed stone materials transport loaded in vehicle No. WB 71A 2021 wherefrom it appears the said vehicle was loaded with

Riverbed Stone Boulders which was sold by Samin Ahmad pursuant to which a tax invoice vide Road-E-Challan No. 1505711/S/21-22/260120221252/PS dated 26.01.2022 which was valid till 11.10 PM. It was issued (tax invoice) in favour of Manik Rahaman and also issued Road E-Challan. Those documents were the valid documents for transportation of the said materials. From the perusal of E-Challan, it appears the petitioner sold the riverbed stone boulders to Manik Rahaman on 26.01.2022 after generating tax invoice and the said riverbed stone boulders was loaded in the truck bearing no. WB 71A 2021 for its transportation. So, question of committing offences alleged by the complainant does not arises. Petitioner has neither committed any act of theft, dishonestly receiving stolen property nor Section 21 of the Mines & Minerals Act and 3 of PDPP Act. Surrendering voluntary himself before the learned court does not ipso facto make him accused. Furthermore, the complainant is also not the authorised person under the aforesaid Act.

8. In view of the above discussions and on perusal of the material available in record, CD and considering the judgements relied by the parties, this Court does not find any sufficient materials against the present petitioner for an offence punishable under Sections 379/411/34 of the IPC,1860 read with Section 21 of the Mines and

Minerals (Development and Regulation) Act, 1957 and Section 3 of the Prevention of Damage to Public Property Act, 1984. Furthermore, no authorised person has lodged the complaint in terms of the notification dated 24.01.1991 being notification No. 87-C1/GR (D) under the said Act, 1957.

9. Consequently, this Court can exercise inherent power under Section 482 of the Cr.PC to quash the proceeding to secure the end of justice.

10. The impugned proceeding being G.R. Case No. 575 of 2022 pending before the learned Judicial Magistrate, 2nd Court, Jalpaiguri arising out of Rajganj Police Station Case No. 128 of 2022 dated 26.01.2022 under Sections 379/411/34 of the Indian Penal Code, 1860 read with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Section 3 of the Prevention of Damage to Public Property Act, 1984 is hereby quashed with regard to the present petitioner, namely, Samim Ahmed. All Orders passed by the learned Court below against the present petitioner, namely, Samim Ahmed is also set aside.

11. Accordingly, **CRR 263 of 2023** is, thus, **allowed** without order as to costs. Connected applications, if any, are also, thus, disposed of.

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

13. Case Diary is to be returned to the learned counsel for the State. Case record be also returned to the Circuit Bench at Jalpaiguri.

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)