

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34709 of 2016

Arising Out of PS. Case No.-66 Year-2009 Thana- SAHODARA District- West Champaran

1. Anil Sah Son of Late Lagan Sah, resident of Village- Turkauliya, Police Station- Matiyaria, District- West Champaran.
2. Bijay Prasad son of Shivji Sah, resident of Village- Bhelwa, Police Station- Gaunaha, District- West Champaran.
3. Guddu Sahani Son of Sitaram Sahni, resident of Village- Bhelwa, Police Station- Gaunaha, District- West Champaran.
4. Madan Sah Son of Hiranman Sah, resident of Village- Barwa, Police Station- Sahodra, District- West Champaran.
5. Hal Babu Son of Mumtaz Ahmad, resident of Village- Maheshpur, Police Station- Sikarpur, District- West Champaran.
6. Rajiv Kumar Yadav son of Ramesh Yadav, resident of Village Paraun, Police Station- Sahodra, District- West Champaran.
7. Raju Prasad Chaurasiya, son of Rajendra Bhagat, resident of Village- D.K Sikarpur, Police Station- Sikarpur, District- West Champaran.
8. Vaidya Nath Sah son of Late Nathuni Sah Resident of Village- Dhanaui Balua, Police Station- Sahodra, District- West Champaran.
9. Shankar Sah Son of Dukhi Sah, resident of Belbagicha, Police Station- Sikarpur, District- West Champaran.
10. Dharmendra Sah @ Dharmnath Sah Son of Nathuni Sah, resident of Village- Balua Dhanaui, Police Station- Sahodra, District- West Champaran.
11. Nandlal Sah Son of Nagina Sah, resident of Village- Lachhnauta, Police Station- Gaunaha, District- West Champaran.
12. Khublal Sah @ Rabbu Lal Sah, Son of Nagina Sah, resident of Village- Lachhnauta, Police Station- Gaunaha, District- West Champaran.
13. Munna Sah son of Khublal Sah, resident of Village- Lachhnauta, Police Station- Gaunaha, District- West Champaran.
14. Shivji Prasad son of Ram Prasad Sah, Resident of Village- Belwa, Police Station- Gaunaha, District- West Champaran.
15. Umesh Sharma Son of Madan Thakur, resident of Village- Majhariya, Police Station- Gaunaha, District- West Champaran.
16. Sainullah Mian son of Mohan Mian, resident of Village- Dewar, Police Station- Sahodra, District- West Champaran.
17. Dhrup Bihari Mahto @ Dhrup Mahto son of Late Chokat Mahto, resident of Village- Bethaniya, Police Station- Sahodra, Post -Jamuniya, District- West Champaran.
18. Om Prakash Chaurasiya, son of Late Sadari Bhagat, resident of Mohalla Masjid Road, Narkatiyaganj, Ward NO. 15, Police Station- Narkatiyaganj,



District- West Champaran.

19. Rajan Kumar Son of Bhutkun Mahto, resident of Village- Majhauilya Babu Colony, Police Station- Majhauilya, District- West Champaran.

... .. Petitioners

Versus

The State Of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Anil Kumar, Advocate
For the State : Mr. Chandra Sen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 20-01-2025

The present petition, under Section 482 Cr.PC, has been preferred by the petitioners for quashing and setting aside the impugned order dated 02.05.2013, passed by learned C.J.M., West Champaran at Bettiah in Sahodra P.S. Case No. 66 of 2009 (G.R. No. 2715 of 2009), whereby learned C.J.M. has taken cognizance against the petitioners of the offence punishable under Sections 379 and 120B read with Section 34 of the Indian Penal Code and Sections 33 and 41 of the Indian Forest Act and Sections 4(1) and 40(10) of Bihar Minor Mineral Concession Rules, 1972.

2. The prosecution case as per the FIR is that Mining Inspector, District Mining office, West Champaran at Bettiah seized 20 vehicles loaded with soil and stone and the same were handed over to the Police Station along with written report for



lodging the FIR. The vehicles belong to the petitioners and released to them by the confiscation authorities under the Forest Act.

3. After investigation, charge-sheet was submitted against the accused persons and thereafter, cognizance was taken against the petitioners by learned C.J.M. by the impugned order.

4. I heard learned counsel for the petitioners and learned APP for the State.

5. Learned counsel for the petitioners submits that the petitioners are innocent and have falsely been implicated in this case. He further submits that the alleged vehicles were not found to be transporting any mineral. They were standing in front of the houses of their owners. He further submits that all the vehicles have been also got released by Confiscating Authority in favour of the petitioners, finding no commission of the offence under the Indian Forest Act. He further submits that the falsity of the case emerges from the fact that some of the vehicles shown to be loaded with minor minerals were not attached with engines. As such, there is no question of transporting alleged minor minerals. He further submits that as a matter of fact, all the vehicles were standing in front of the



houses of the petitioners and no offence has been committed by them. He further claims that in fact, there was nothing loaded in the alleged vehicles. He further submits that under the Bihar Minor Mineral Concession Rules, 1972, prosecution can be initiated only by lodging complaint by the competent authority. Hence, FIR is not maintainable and liable to be quashed.

6. However, learned APP for the State defends the impugned order submitting that there is no illegality or infirmity in it and the present petition is liable to be dismissed. He further submits that as per the uncontroverted allegation made in the FIR, the offences as taken cognizance of by the impugned order, are clearly made out. He further submits that the prosecution can be initiated under IPC and Indian Forest Act even by lodging FIR or even under the Bihar Minor Mineral Concession Rules, 1972. The proceeding cannot be quashed only on account of FIR to have been filed by the competent authority.

7. I considered the submissions advanced by both the parties and perused the materials on record.

8. I find that, the allegedly seized soil and stone come under the definition of minor minerals. Hence, the alleged acts of the accused persons are to be governed by Bihar Minor Mineral Concession Rules, 1972. Rule 4 prohibits mining



operation without permit or mining lease, whereas Rule 40 provides for penalty for unauthorized extraction and removal of minor minerals. Rule 41 provides that no Court can take cognizance of any offence under the Rules except upon a complaint made in writing by the competent officer or Deputy Director of Mines or Additional Director of Mines or Director of Mines or any other officer empowered by the Government.

9. In the alleged facts and circumstances, I find that there is no allegation of illegal mining by the petitioners, nor were they found to be transporting the alleged minor minerals. It also appears that all the vehicles were in standing position loaded with alleged minor minerals. As such, no offence is made out under the Bihar Minor Mineral Concession Rules, 1972.

10. However, as per the uncontroverted allegation of the prosecution, they have been found in possession of minor minerals without any documents in support of such illegal possession. But there is no allegation of theft of these minerals by the petitioners. In such situation, the seized minor minerals may be treated as stolen property. Hence, offence punishable under Section 414 IPC is made out against the petitioners.

11. Moreover, in view of Section 41 of the Bihar Minor Mineral Concession Rules, 1972, prosecution for any



offence under the Rules can be initiated only by filing complaint by the competent authority. Hence, any cognizance of offence punishable under the Bihar Minor Mineral Concession Rules, 1972 is not sustainable in the eye of law. However, as per the uncontroverted alleged facts and circumstances, Section 414 of IPC is attracted against the petitioners.

12. As far as application of Sections 33 and 41 of the Indian Forest Act is concerned, as per the facts and circumstances, the petitioners were not found quarrying any stone or soil from the forest area. The Confiscating Authority, under the Forest Act, has clearly held that no offence has been committed by them in the forest area and hence, he has released the vehicles in question in favour of the petitioners. Hence, no penal provisions of the Forest Act are attracted as per the alleged facts and circumstances of the case.

13. Considering the aforesaid facts and circumstances, I find that *prima facie* case is made out only under Section 414 IPC against the petitioners for which prosecution may be initiated by lodging FIR.

14. The plea of learned counsel for the petitioners that the vehicles were not loaded with any minerals whatsoever, cannot be considered at this stage.



15. Accordingly, the present petition is partly allowed, modifying the impugned order to the effect that *prima facie* offence only under Section 414 of IPC is made out against the petitioners.

16. The petitioners are at liberty to raise their plea of defence during trial.

(Jitendra Kumar, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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