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CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri
Appellate Side

CRR 264 of 2023

Samim Ahmed
Vs.
The State of West Bengal & Anr.

Mr. Subir Ganguly,
Mr. Atanu Basu
Mr. Indranuj Dutta
Ms. Madhusree Dutta ...for the petitioner

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Sourav Ganguly ...for the State

Leave to correct the designation of the court in the cause title and in the prayer portion of the application, is granted.

This application has been preferred by the petitioner challenging the impugned proceeding being G.R. case no. 574 of 2022, presently pending before the learned Judicial Magistrate, 2nd Court, Jalpaiguri arising out of Rajganj Police Station case no. 127 of 2022 dated 26.1.2022 under Section 379/411/34 of the Indian Penal Code read with Section 21 of Mines and Minerals (Development and Regulation) Act, 1957 and Section 3 of Prevention of damage to Public Property Act, 1984 (in short Act of 1957 & Act of 1984).

It is submitted on behalf of the petitioner that the petitioner was awarded with a mining lease by the Government of West Bengal for Riverbed Occurrences (Sand and Boulders) mines and minerals in Pagrangbong under Gorubathan Police Station,

covering an area of 2.50 acres for a period of five years from 10th December, 2018.

Pursuant to a suo motu written complaint lodged by the opposite party no. 2 herein, the instant case has been initiated under the above mentioned provisions of law and upon completion of investigation, police has submitted charge-sheet under Section 379/411/34 of the IPC read with Section 21 of the Act of 1957 and under Section 3 of the Act of 1984 against the petitioner and two others. It is alleged that the learned court below has taken cognizance upon the said offence without applying its judicial mind.

The written complaint which has been lodged suo motu discloses that while complainant along with force were performing “*Naka checking*” duty on 26.1.2022 around 15.15 hours on National Highway near Hatimore, they detained the truck bearing no. WB 78-1325, which was passing towards Siliguri and it was found that the said truck is loaded with stone. It is further stated in the complaint that on interrogation, the driver concerned disclosed his identity but he failed to produce any document in support of the loaded stone in the truck. Accordingly, police seized the said truck under proper seizure list and arrested the driver of the said truck and initiated the instant proceeding.

Being aggrieved by that proceeding, the petitioner contended that the present petitioner is no way connected with the alleged offence and he has been falsely implicated without making proper investigation. He further contended that the Magistrate illegally and arbitrarily took cognizance of the alleged offence, ignoring the

notification dated 24th January, 1991. He further submits that in terms of Rule 62 of the West Bengal Mines and Minerals Concession Rules, 2016, the West Bengal Mines and Minerals Rules, 2002 has already been repealed with effect from 14th September, 2015. In spite of the fact that Mines and Minerals Rules 2002 has been repealed, the concerned Inspector filed instant case under Section 21 of the Act of 1957 read with Rules of 2002.

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 therein, except upon complaint in writing made by a person authorized in this behalf by the Central Government or the State Government. In terms of the said notification dated 24.1.1991, the concerned B.L.L.R.O. has given power to lodge the complaint.

He further contended that Hon'ble High Court in an unreported decision being no. 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 offence 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 Act of 1957 and Section 3 of the Act of 1984 as per the submitted charge sheet.

Learned counsel for the State placed the case diary and submitted in his usual fairness that there is a discrepancy in the statement about the time of alleged occurrence in the statement recorded under Section 161 of the Code of Criminal Procedure with that of time mentioned in complain and he also submitted that the copy of the challan dated 26.1.2022 has also been seized by the police during investigation and apparently, act of petitioner do not attract any criminal offence. He further submits that almost on the same set of facts, a separate case being no. CRR 263 of 2023 was lodged in respect of the same accused in connection with a separate vehicle, where this High Court was pleased to quash the entire proceeding as the materials against the present petitioner does not constitute any offence punishable either under Section 379/411/434 of the IPC or under Section 21 of the Mines and Minerals Act, 1957 or under Section 3 of the PDPP Act 1984 and also because no authorized person has lodged the complain in terms of the notification dated 24.1.1991 being notification no. 87C-1/GR (D) in the said act of 1957.

Having heard the learned counsel for both the parties and also on perusal of the materials available in the case diary, I find that at the time of detaining the vehicle, the police had seized the road E-challan for carrying stone materials loaded in vehicle no. WB 78/1325, wherefrom it appears that the said vehicle was loaded with riverbed stone, boulders pursuant to road E-challan which was valid till 11.05 P.M. from 11.05 A.M on 26.1.2022. Prosecution failed to show any reason as to why these documents are not valid documents for transportation of said materials.

Under Section 379 of IPC, it is absolutely imperative to show that the accused had a dishonest intention to take the property resulting wrongful gain to the petitioner, which is absent in the present case. In order to constitute an offence of dishonestly receiving stolen property under Section 411, it is to be shown that the property is a stolen property, which has been dishonestly received or retained and that the accused knew or had reason to believe that the property was stolen property, which is also not the case of prosecution in the present context.

Similarly when the petitioner has been granted a valid lease by the competent authority, which has not been disputed, the present case does not attract Section 21 of the Act of 1957.

Moreover, under Section 3 of the Act of 1984, prosecution must *prima facie* show mischief causing damage to public property. In order to constitute a mischief, it is to be shown that there was intention to cause wrongful loss and damage to the property and with that intent destruction or damage has been caused in diminishing the value or utility of the property, which is also not the case of prosecution in the present context.

In such view of the matter, I do not find any reason to differ with the observations made by a co-ordinate Bench of this court almost on the same set of facts occurred in connection with a different vehicle in CRR 263 of 2023. The present proceeding therefore, is also liable to be quashed, in view of the fact that the prosecution has miserably failed to make out any *prima facie* case against the petitioner in respect of alleged offences and as such,

continuance of further criminal proceeding before the court below would be a mere abuse of the process of court.

In such view of the matter CRR 264 of 2023 is accordingly allowed. The impugned proceeding being G.R. case no. 574 of 2022, presently pending before the learned Judicial Magistrate, 2nd Court, Jalpaiguri arising out of Rajganj Police Station case no. 127 of 2022 dated 26.1.2022 stands quashed.

Urgent Photostat certified copy of the order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)