

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (Cr) No. 402 of 2009

Feku Ram Petitioner
Versus

The State of Jharkhand Respondents

Coram : HON'BLE MR. JUSTICE D.N.UPADHYAY.

For the petitioner : Mr. K.K.Ojha
For the respondent State : xxx

CAV on 01/09/2012. Date of pronouncement: 31/10/2012

31/10/2012 This Criminal Writ Petition has been filed on behalf of the petitioner for quashing of the order dated 05.08.2009(Annexure-6) whereby sanction has been accorded for prosecution of the petitioner under sections 406/467/468/414/420 in connection with Pakur P.S. case No. 117 of 1999 registered on 8.7.1999.

2. It appears that the petitioner is the informant in the aforesaid Pakur P.S. case No.117 of 1999 . According to his written report, a special drive was going on to prevent illegal mining. On 7.7.1999, after receiving secret information, Kartik Bhagat was apprehended, who happens to be the son of Sita Devi, a lessee, who had been providing permit for transportation of stone chips. The Truck No. WGQ 2007, while carrying 250 cft stone chips, size 5/8"on the basis of challan issued in favour of the said Sita Devi, lessee, was seized by the informant. On verification, it was detected that permits for transportation of stone chips issued in favour of the lessee Sita Devi were being misused by accused Kartik Bhagat for the purpose of smuggling of stone chips . During investigation, involvement of Feku Ram (petitioner) who was informant in the said case, was also surfaced and therefore sanction for prosecution was sought for and finally by the impugned order sanction for prosecution of the petitioner was accorded.

3. It is submitted, it was the petitioner who made efforts to check illegal mining and smuggling of stone chips and lodged a case against Kartik Bhagat and others, but he has been made accused in this case without valid reasons and grounds. The Superintendent of

Police, Pakur by his letter no. 813 dated 22.11.2000 reported the matter to the DIG, Santhal Paraganas Range, Dumka, who by his letter no. 2299 dated 21.12.2008 (Annexure 3) addressed to the Deputy Secretary, Govt. of Jharkhand, Department of Mines, sought order for sanction for prosecuting the petitioner for committing offences punishable under section 406, 467, 468, 414 and 420 IPC as well as Rule 40 of the Mines & Minerals (Regulation & Development) Act, 1957. It was pointed out that prior to issuance of the aforesaid letter dated 21.12.2008 (annexure 3) vide memo no. 1212 dt.15.12.2000 (Annexure 4) issued under the signature of the then Dy. Inspector General of Police, Santhal Parganas Range, the Deputy Director of Mines, Santhal Parganas Range was requested to submit rules and regulations about issuance of transport challans, so that decision may be taken against the petitioner for his criminal negligence and responsibility. In response to the aforesaid communication, report was called for and the petitioner by his letter no. 2553 dated 27.12.2000 (Annexure 5) addressed to the Deputy Director of Mines, submitted para-wise report and mentioned that in the interest of Govt revenue, transport challans were issued in favour of the alleged lease holders who also submitted monthly returns as per the provisions. Inspite of the fact that no material was available against the petitioner, on presumption and surmises, the Secretary, Dept. of Mines, referred the matter to the Department of Law for according sanction for prosecution of the petitioner and the Deptt of Law, without examining the materials on record, by the impugned order, accorded sanction which was without application of mind and without compliance of the provisions contained under the MMRD Act and the Rules. It is submitted that whatever act was done by the petitioner, it was done in discharge of his official duty and, therefore, he should not have been prosecuted for criminal offence in view of protection provided under section 27 of the MMRD Act, 1957 and also exception engrafted under section 79 of the IPC. The petitioner has also referred the supplementary affidavit filed on 15.6.2012 and submitted that from office notings dated 18.6.2008 of the Secretary,

Department of Mines, it is evident that the said authority had not accorded sanction; rather, had sought opinion from the Department of Law (Judicial) required under Rule 53(1)(c) of the Rules of Executive Business, though by amendment in the Rules of the Executive Business, the extent note to Rule 53(1)(c) has been deleted and substituted by the following words :

"All kinds of orders regarding prosecution shall be issued by the Law (Judicial) Department after orders have been obtained in accordance with Rule 32(a) (xix)."

4 Thus, after the aforesaid amendment, it is clear that the Department of Law (Judicial) has no authority to accord sanction for prosecution against any public servant. In case of a public servant like the petitioner, approval of the Government is required and therefore the impugned order was not issued in accordance with law laid down by the apex court in the case of *State Vs. T Venkatesh Murthy*, reported in 2004 (7) SCC 763 and also in the case of *State of Goa Vs. Babu Thomas*, reported in 2005 (8) SCC 130. Grant of proper sanction by the competent authority is a *sine qua non* for taking cognizance of the offence and when sanction is granted by a person not authorized under the law, the same being without jurisdiction would be a nullity and such view was taken in the case of *P.A. Mohandas Vs. State of Kerala* (2003 (9) SCC 504).

In view of the submissions made above and the judgment relied upon, the impugned order is liable to be set aside.

5 On the other hand, learned counsel appearing on behalf of the respondent has submitted by filing supplementary counter affidavit that the petitioner has tried to mislead the provisions contained under Rules of the Executive Business. As a matter of fact, the Mining Department had sent the file along with the noting and after perusal of the same, approval for sanction was obtained and then impugned order for prosecution of the petitioner was issued. It was further pointed out that on the date of issuance of the impugned sanction order, President Rule as envisaged under Article 356 of the Constitution of India was promulgated in the State of Jharkhand. A

copy of the proclamation of the President Rule has been annexed as Annexure 4 with the supplementary affidavit dated 31.8.2012. During President Rule, all executive business were vested in the President of India and the same were exercised by His Excellency, the Governor of Jharkhand. The Notification dated 19.1.2009, clause (a) reads as under :

“(a) Assume to myself as President of India all functions of the Government of the said State and all powers vested in or exercisable by the Governor of that State.”

6 That during the President Rule in Jharkhand, an Advisory Board to his Excellency, the Governor, was constituted and accordingly work of different departments were assigned to the Advisers to His Excellency, the Governor, vide Memo No. 782 dated 26.6.2009(Annexure B). Therefore, on the date, His Excellency, the Governor of Jharkhand, was competent to approve for grant of sanction in the present case against accused Feku Ram.

7 I have considered the rival submissions, affidavits and counter affidavits. I have also examined the provisions contained in Rules of executive Business, 1979 as amended up to August,1992. I have also perused section 27 of the MMRD Act 1957. The documents placed before me indicate that FIR was lodged vide Pakur P.S. case No. 117 of 1999 at the instance of petitioner. But during investigation, it was detected that involvement of petitioner who was then posted as the Assistant Mining Officer was also there in promoting illegal business of mining of stone chips. it reveals from the fact available in the written report that mining lease was granted in favour of Sita Devi who was none else, but the mother of accused Kartik Bhagat who was found using challans for transporting stone chips, though he was not having crusher. The quality and nature of stone chips was not indicated in those challans; rather, 'stone' a vague term was being mentioned in those challans. It is also apparent from the documents available that on 15.8.1998 (challan Nos. 750 to 900), on 17.8.1998 (challan nos. 901 to 1000), on 14.10.1998 challan no.1000 to 1100 and on 13.3.1999 challan no.

1101 to 1300 were issued in favour of the lessee Sita Devi, but till March, 1999, returns in respect of challans no. 901 to 910 were filed and altogether 390 challans were kept pending though it were liable to be returned till March, 1999. In this way, involvement of Mining Department and its officers was surfaced. Challans were regularly issued though required returns were not filed in time.

Section 27 of the MMRD Act reads as follows:

“27. Protection of action taken in good faith.- No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.”

8 It is not a case in which act was done in discharge of official duty in good faith; rather connivance with the Department in the said illegal business of stone chips was appearing and therefore, the petitioner is not entitled to be given protection of section 27 of the MMRD Act, 1957.

9 I have also gone through the amendment to Rules 32(a) and 53(i)(c) of the Executive Business, 1979 as amended upto 1st August, 1992. From amendment, it appears that the notes appended to Rule 53 (i)(c) has been deleted and substituted in the following words :

“ All kinds of orders regarding prosecution shall be issued by the Law (JUDL) Department after orders have been obtained in accordance with rule 32(a) (xix).”

Under Rule 32(a), a new sub rule has been inserted as Sub Rule (xix) which reads as follows :

Rule (xix).. All recommendations of the Law (JUDL) Department under rule 53(i)(c).

10 Even after above amendments in the rules of Executive Business under Rule 32(a) and 53(i)(c), sanction for prosecution, order has to be given by the Secretary, Department of Law, on the basis of the recommendations made by the concerned department and after seeking approval from the Chief Minister.

11 In the case at hand, the Secretary Mining Department had sent the concerned file of the petitioner for grant of sanction for his

prosecution and the Department of Law (Judicial), Govt of Jharkhand after getting approval from his Excellency Governor, issued impugned order which is under challenge. Since there was President Rule at the relevant point of time, all executive business of the Govt of Jharkhand were vested in His Excellency the Governor and therefore, I do not find any illegality in grant of sanction has occurred. So far as the defence of petitioner's involvement in the offence restricted to the discharge of his official duty shall be considered in course of trial.

12 Since there was special circumstance in the State of Jharkhand and there was President Rule, the points raised in the judgment cited by the petitioner are not required to be discussed.

Considering all these aspects of the matter, I do not find any merit in this writ application, which is, accordingly, dismissed.

Ambastha/-

(*D.N.Upadhyay, J*)