

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 806 of 2009

Dwarka Singh	Versus Petitioner
The State of Jharkhand	 Opposite Party

CORAM : HON'BLE MR. JUSTICE H. C. MISHRA

For the Petitioner	:	Mr. A.K. Chaturvedi, Advocate. Mr. Janak Kumar Mishra, Advocate Mr. Piyush Poddar, Advocate
For the State	:	A.P.P.

5/31.7.2014 Heard the learned counsel for the petitioner and the learned counsel for the State.

2. The petitioner is aggrieved by the order dated 8.12.2006 passed by the learned Chief Judicial Magistrate, Palamau at Daltonganj, in C.F Case No. 351 of 2006, whereby, the cognizance has been taken against the petitioner and the other co-accused persons under Sections 33, 41 & 42 of the Indian Forest Act. The petitioner has also challenged the entire criminal proceeding in the said case.

3. From the offence report, it appears that on 30.4.2005, the forest guard found that the mining process going on in the protected forest and he called the *munshi* who was present there and asked him to stop the work, but the work was not stopped. In the offence report, one Sikandar Singh has been named as *munshi*. Subsequently, the prosecution report was submitted, in which, the petitioner has also been named showing to be one of the *munshis* of Chotanagpur Graphite Industries, which was found to be engaged in the mining process.

4. Learned counsel for the petitioner has taken a short point in challenging the impugned order, submitting that there is no provision for vicarious liability in the Indian Forest Act and accordingly, the criminal proceeding against the petitioner, including the cognizance order, cannot be sustained in the eyes of law. In support of his contention, learned counsel for the petitioner has placed reliance upon the decision of this Court in **Md. Fasiuddin & Ors. Vs. State of Bihar (Now Jharkhand) & Anr.** reported in 2012 (3) JCR 602 (Jhr.), wherein, relying upon the decisions of the Apex Court in

S.K. Alagh Vs. State of U.P. & Ors., reported in (2008) 5 SCC 662 and in **Maharashtra State Electricity Distribution Company Ltd. & Anr. Vs. Datar Switchgear Ltd. & Ors.**, reported in (2010) 10 SCC 479, it has been held as follows :-

"9. Thus, so far as the cognizance against these petitioners of the offence under Section 33 of the Indian Forest Act is concerned, the case is fully covered by the aforementioned decisions of the Supreme Court, wherein, it has been specifically held that wherever legal fiction of the vicarious liability is directed against a person, who is otherwise not personally involved in the commission of the offence, is made liable for the same, it has to be specifically provided in the Statute concerned. In Section 33 of the Forest Act, there is no provision for any vicarious liability and accordingly, in absence of any specific averment / allegation against the petitioners in the prosecution reports, the institution of the cases against these petitioners under Section 33 of the Indian Forest Act and the cognizance taken against them under the said Act are absolutely illegal and the same cannot be sustained in the eyes of law."

Placing reliance on this decision, learned counsel for the petitioner has submitted that the petitioner has been made accused in these cases only being one of the *munshis* of Chotanagpur Graphite Industries and he was not actually present at the place of occurrence, which is apparent from the offence report which shows that another *munshi* was present at the place of occurrence, who was also named therein, and accordingly, the impugned order cannot be sustained in the eyes of law.

5. Learned counsel for the State, on the other hand, has opposed the prayer and has submitted that the petitioner being one of the *munshis* of the Chotanagpur Graphite Industries, which was involved in the illegal mining in the protected forest, is also liable for the offence.

6. After having heard the learned counsels for both sides and upon going through the record, I find that the case of the petitioner is fully covered by the decision of this Court in **Md. Fasiuddin's** case (supra). It is apparent from the offence report dated 30.4.2005 that the petitioner was not present at the place of occurrence and another person is named as the *munshi*, who was present there. There is no allegation against the petitioner in the offence report, nor is he named therein. Only in the prosecution report the petitioner had been made accused, being the one of the *munshis* of Chotanagpur Graphite Industries, without making any specific averment or allegation against him.

7. In that view of the matter, there being no provision for any vicarious liability in the Indian Forest Act, I am of the considered view that the prosecution of the petitioner cannot be sustained in the eyes of law. Accordingly, the impugned order dated 8.12.2006 passed by the learned Chief Judicial Magistrate, Palamau at Daltonganj, in C.F Case No. 351 of 2006, so far as it relates to the petitioner only, as also the entire criminal proceeding against the petitioner in the said case, are hereby, quashed.

8. This application is accordingly, allowed.

(H. C. Mishra, J.)

B.S/