IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1473 of 2017

Application under Section 482 of Criminal Procedure Code, 1973.

Khirod Chandra Pradhan ..... Petitioner

-Versus-

State of Odisha and others ..... Opp.Parties

Advocate(s) appeared in this case:-

For Petitioner : Mr. Sanjit Mohanty, Sr. Advocate with M/s. S.P. Panda, S.S. Samantray & C.K. Rout, Advocate.

For Opp. Parties : Mr. P.K. Parhi, DSGI

CORAM:
JUSTICE SASHIKANTA MISHRA

JUDGMENT
16th February, 2022

SASHIKANTA MISHRA, J. In the present application filed under Section 482 of Cr.P.C. the petitioner seeks to challenge the initiation of criminal proceedings vide 2(c)CC No. 42 of 2013 in the Court of learned S.D.J.M., Bonai as also the order dated 06.12.2013 passed by the S.D.J.M., Bonai in taking cognizance of the offence under Section 15 of the

Environment (Protection) Act, 1986 (in short 'the Act, 1986) and issuing summons to him to appear before him.

2. The brief facts of the case are that the petitioner is the lessee of Ganua Iron & Manganese Mines, Koira in the district of Sundargarh over an area of 12.56 hac.. The opposite party no.3 has filed a complaint petition in the court of S.D.J.M., Bonai without calling for any show cause reply from the petitioner. The petitioner having inspected the file through his counsel, came to know that learned S.D.J.M., Bonai had taken cognizance of the offence under Section 15 of the Act on 06.12.2013 and summoned him to appear before him.

3. It is stated in the petition that the lessee had undertaken production from 2000-2001 to 2008-2009 without obtaining the requisite prior environmental clearance from the Ministry as required under EIA Notification 2006. It was reiterated that the lessee had not violated any of the conditions of EIA Notification, 2006 nor caused any damage or adverse effect on environment by raising iron ore within the permissible production limit as

approved by IBM under the relevant rules. The petitioner had sought for environmental clearance on 30.12.2006 whereas the EIA Notification, 2006 required seeking of clearance by 30.06.2007 and EC was issued on 04.09.2010, 21.03.2011 and 30.05.2015. Thus, the allegations made under the complaint petition, even if accepted on their face value do not, prima facie, satisfy the ingredients of the alleged offence and therefore, the order taking cognizance and issuing summons to the petitioner is bad in law.

4. Heard Mr. Sanjit Mohanty, learned Senior Counsel along with Mr. I. Acharya, learned counsel for the petitioner and Mr. P.K. Parhi, learned Deputy Solicitor General for the Union of India.

5. Opening his arguments, Mr. Mohanty, by relying upon the ratio of the judgment of the Apex Court in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate,*** reported in AIR 1998 SC 128 : (1998) 5 SCC 749 contends that summoning of an accused is a serious matter for which the Court is required to apply its mind to

all the materials on record and the applicable laws before deciding to proceed against the accused.

6. Mr. Mohanty further argues that even on merits, the complaint has no legs to stand in view of the fact that the allegations pertaining to alleged violation of the EIA Notification, 2006 are without basis for the reason that the said notification came into effect on 14.09.2006 and therefore, the period of alleged violation between 2000 and 2006 cannot be covered under it. Even otherwise, the petitioner having applied for environmental clearance for enhancement of production prior to the cut- off date, i.e. on 30.06.2007, there is no violation of the EIA Notification 2006 so as to form the basis for initiating criminal proceeding.

7. Mr. P.K Parhi, learned Deputy Solicitor General for the Union of India submits that subsequent grant of EC cannot take away the liability of the lessee for production without obtaining EC in the prior period. The petitioner submitted environmental clearance application on 28.06.2007 and was granted the same on 04.09.2010, 21.03.2011 and 30.05.2015, yet the mining operation for

the period from 2001 -2009 was without obtaining prior environmental clearance under EIA Notification, 1994. Mr. Parhi further contends that in ***M.C. Mehta v. Union of India***, reported in (2004) 12 SCC 118, the Apex Court held that all mining projects of major minerals of more than 5 ha. lease areas which have so far not obtained an environmental clearance under the EIA Notification, 1994 shall do so at the time of renewal of their licence for which a circular was issued on 28.10.2004. Mr. Pari further submits that in ***Common Cause vs. Union of India*** [Writ Petition (Civil) No. 114 of 2014, decided on 02.08.2017], the Apex Court held that if there is no expansion, modernization or increase in production activities then also a NOC is required from the State Pollution Control Board(SPCB) for continuing the mining activities. The petitioner submitted application for environmental clearance to the Ministry only on 28.06.2007. Thus, neither environmental clearance was obtained under the EIA Notification, 1994 nor NOC was obtained from SPCB for the period in question. According to Mr. Parhi therefore,

initiation of criminal proceeding by way of the complaint petition is fully justified.

8. Having regard to the rival contentions noted above, it would be proper to first refer to the averments of the complaint petition, copy of which has been enclosed as Annexure-1 to the CRLMC application. Under the column "Facts of the case" it is inter alia stated as under:

> *"It has come to the notice of Government of India, Ministry of Environment & Forest that said mining project had taken production from 2000-2001 to 2008-2009 without obtaining the requisite prior environmental clearance from the Ministry as was required under Environmental Impact Assessment (EIA) Notification 2006 which is a mandatory provision to operate the mines. This amounts to violation of provisions of environment (Protection) Act, 1986. The intervening period during which the project was operating without environmental clearance would be treated as period of violation."*

9. Such being the allegation, it has been argued forcefully by the petitioner that the lessee having applied for EC prior to the cut-off date, there is no violation on its part. These are all factual aspects. It is trite law that the Court at the stage of taking cognizance is only required to apply its judicial mind to the materials produced by the prosecution/complainant to be prima facie satisfied whether the alleged offence has been committed or not. It is

not necessary to make a roving enquiry at that stage to see as to if the accused person(s) have committed the offence or not. Reference in this regard can be profitably made to the decision of the Apex Court in the case of ***Sonu Gupta v. Deepak Gupta***, reported in (2015) 3 SCC 424.

10. According to Mr. Mohanty, these allegations are unfounded and that no case is actually made out against the petitioner. To buttress his contention, Mr. Mohanty has taken this Court through the provisions of the EIA Notifications of 1994 and 2006 besides several Circulars and Guidelines issued by the government in such respect from time to time. The sum and substance of the arguments made in this regard are that the petitioner had duly complied with the statutory requirement of obtaining Environmental Clearance within the stipulated date and hence, they are no longer liable for any penal action under the statute.

11. To appreciate the contention raised, two aspects are relevant for consideration. Firstly, the duties of the Magistrate at the stage of taking cognizance and

secondly, consideration of the question, whether issuing process by the Magistrate against the accused person(s) in the facts and circumstances of the present case warrant any interference by this Court? In ***Sonu Gupta*** (Supra) it was observed as under:

> ***8.*** *Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.*

12. As already seen, the complaint petition specifically alleges that the accused petitioner had undertaken mining activity without obtaining the mandatory Environmental Clearance. This, prima facie, shows commission of the offence under Section 15 of the Act. To such extent therefore, the order of the learned

Magistrate taking cognizance of the offence under Section 15 of the Act cannot be faulted with.

13. Be it noted here that taking of cognizance of the offence is not the same thing as issuing process against the accused. As held by the Apex Court in the case of ***State of Karnataka v. Pastor P. Raju,*** reported in ***(2006) 6 SCC 728***, cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in the complaint. Whereas, issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offender against whom a prima facie case is made out. In the case at hand, however, learned Magistrate has, by the same order taken cognizance of the offences and also issued process against the accused. There is nothing wrong in this inasmuch as it implies that that the Magistrate found that the averments of the complaint petition suggested commission of the offence as also that prima facie, the case warranted summoning the accused persons.

14. Coming to the next point, that is, does continuance of the criminal proceeding amount to an abuse of the process of the Court, it is necessary to refer to the decision of the Apex Court in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate,*** reported in ***(1998) 5 SCC 749*** cited by Mr. Mohanty in support of his contention that summoning an accused person is a serious matter and ought not to be done mechanically but should reflect proper application of mind by the Magistrate. The following observations of the Apex Court in the said case are relevant:

> ***28.*** *Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any*

offence is prima facie committed by all or any of the accused.

15. While there can hardly be any dispute as regards the above proposition of law laid, yet as held in ***Sonu Gupta (Supra)***, the observations in ***Pepsi Foods (Supra)*** only highlight that the *accused can approach the High Court to have the proceeding quashed when the complaint does not make out any case against him*. So, the bottom line is, the High Court would be justified to interfere only if the complaint petition does not reveal any case against the accused as it would then amount to relegating the accused to undergo the ignominy of a criminal trial even without there being a prima facie case against him.

16. After carefully perusing the complaint averments along with its enclosures in light of the contentions put forth by the petitioner, this Court finds that the complaint at hand is not one which can be branded as not making out any case against the petitioner so that if allowed to proceed, it would amount to an abuse of the process of the court. Whatever has been argued on

behalf of the petitioner can well be employed for their defence during trial but they are such as cannot be gone into at this preliminary stage. The applicability of the Notifications, adherence to time-stipulations contained in various Circulars etc. are matters that can be considered at a later stage. The merits of the defence case cannot be gone into now. The following observations in ***Sonu Gupta (Supra)*** would be relevant for consideration:

> ***"9.*** *It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of the charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial."*

17. For the foregoing reasons therefore, this Court find no illegality committed by the learned SDJM in

passing the impugned order. This Court is also not persuaded to hold that continuance of proceedings in the complaint case filed against the petitioner would amount to an abuse of the process of Court so as to be persuaded to quash the same.

18. In the result, the petition is found to be devoid of merit and is hence, dismissed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 16th February, 2023/ A.K. Rana, P.A.