

Orissa High Court**Ramesh Ku. Agarwal & Others vs State Of Orissa & Others on 9 July, 2019**

HIGH COURT OF ORISSA: CUTTACK.

CRLMC No.2440 of 2010

(An application under [Section 482](#) of the Criminal Procedure Code)

 Ramesh Ku. Agarwal & others Petitioners

- Versus-

State of Orissa & others Opposite Parties

For Petitioners :M/s. Sanjit Mohanty, S.P. Panda, S.
 Pattnaik, P.K. Muduli.

For Opposite Parties : Mr. D.K. Praharaj (Addl. Standing Counsel)

PRESENT:

THE HONOURABLE DR. JUSTICE AKSHAYA KUMAR MISHRA

 Date of hearing: 03.07.2019, Date of judgment: 09.07.2019

Dr. A. K. Mishra, J. In this proceeding U/s. 482 [Cr.P.C.](#), Prayer has
 been made to quash the criminal proceeding in Koira P.S. Case
 No.64(10)/2010 corresponding to G.R Case No. 324 of 2010 pending in
 the court of learned SDJM, Bonai and to release the illegally seized
 1819.680 tons of Iron Ore Lumps.

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2. Case in brief is that the Mining Officer, Office of the Deputy
 Director of Mines, Koira Circle, Sundargarh vide Letter No.15975 dated
 29.06.2010 lodged an F.I.R. against M/s. Ajay Mineral & Steels (P) Ltd.
 alleging inter alia that in course of verification 48.510 Metric Ton of Iron
 Ore Lumps was found which was procured unauthorisedly for crushing and
 conversation purpose. The said F.I.R. was registered U/s. 379/34 of [IPC](#)
 and U/s. 21 of Mines and Minerals (Development & [Regulation](#)) Act, 1957
 (in short „[MMDR Act](#)“) and investigation was ensued. The present four

accused persons were named in the F.I.R. After investigation, charge-sheet was submitted basing upon which learned SDJM, Bonai took cognizance U/s. 379/34 of [IPC](#) and U/s.21 of [MMDR Act](#). Being satisfied with sufficient ground, issued process against nine accused persons including the present four petitioners. Quashing of a proceeding ipso facto includes the order of taking cognizance as well as F.I.R. as stated above.

3. Learned counsel for the petitioner submits that the police has no jurisdiction to undertake the investigation for the offence U/s.21 of [MMDR Act](#) and as no complaint was filed, initiation of the proceeding and taking of cognizance on police report is illegal and same should be quashed. He has relied upon a decision of this Court in the case of Surendra Kumar Agarwal vrs. State of Orissa & others reported in (2009) 44 OCR 232.

4. Learned Addl. Govt. Advocate, Mr. D.K. Praharaj relying upon a decision reported in (2014) 9 SCC 772 in the case of State (NCT of Delhi)

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vrs. Sanjay submits that the case should be continued for the offence U/s. 379 of [IPC](#) and the Hon"ble Apex Court judgment is binding under [Article 141](#) of the Constitution of India.

5. Carefully read both the cited judgments. In Surendra Ku. Agarwal (supra) decision, it has been held at para-16 and 17 in the following way:-

xxxx xxxx xxxx xxxx
 "16. The aforesaid provisions contained in [Section 22](#) of the MMDR Act and Rule 15 of the 2007 Rules, makes it abundantly clear that no Court shall take cognizance of offence punishable under the said Act or the 2007 Rules made thereunder, except upon a complaint in writing made by the competent authority or person authorized in that behalf by the Central Government or the State Government.

17. The aforesaid provisions of the Act and the 2007 Rules clearly provide that criminal prosecution can be launched only on the basis of a written complaint filed in that regard by the competent authority or the person authorized in that behalf and not otherwise. Hence a reading of the aforesaid provision makes it clear that no FIR can be registered by the police for any

offence committed under [Section 21](#) of the MMDR Act and the said provision does not contemplate investigation in a normal way by the police on the basis of an FIR but only on the written complaint to be presented to the concerned Court."

In the decision of the Hon^{ble} Apex Court in the case of State (NCT of Delhi) (supra), it has been held as follows:-

"69. Considering the principles of interpretation and the wordings used in [Section 22](#), in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the riverbed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining

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which is damaging the ecosystem of the rivers and safety of bridges. It also weakens riverbeds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the groundwater levels.

70. There cannot be any dispute with regard to restrictions imposed under the [MMDR Act](#) and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of [Section 4](#) and other Sections of the Act, the officer empowered and authorized under the Act shall exercise all the powers including making a complaint before the Jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorized officer. In case of breach and violation of [Section 4](#) and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in [Section 22](#) of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such persons is sought to be prosecuted for contravention of [Section 4](#) of the Act and not for any act or omission which constitutes an offence under [the Penal Code](#)."

5.(a) Precedential propriety commands to follow the law laid down by the Hon^{ble} Apex Court qua the High Court. As per the ratio of aforesaid State (NCT of Delhi) vrs. Sanjay (supra) decision, the investigation can be taken up for the offence U/s. 379/34 of [IPC](#) as the F.I.R. discloses the same. But for want of complaint, the offence for contravention of the [Section 4](#) of MMDR Act cannot be proceeded with. This being the legal position, this Court does not feel justified to quash the proceeding in toto.

6. In that view of the matter, the order dated 12.08.2010 taking cognizance U/s. 21 of MDR Act is hereby quashed.

6.(a) However, the proceeding will continue for offence U/s. 379/34 of IPC against all the accused persons named in the order dated 12.08.2010.

Accordingly, the CRLMC is allowed in part.

LCR be returned immediately to the lower court.

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Dr. A.K. Mishra, J.

Orissa High Court, Cuttack, Dated the 9th July, 2019/RRJena