

Narendra Pal & AnotherApplicants vs State Of Uttarakhand & Another on 7 November, 2022

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL
Criminal Misc. Application No.1240 of 2021

Narendra Pal & anotherApplicants

Vs.

State of Uttarakhand & anotherRespondents

Present:- Mr. Sandeep Kothari, Advocate for the applicants.
Mr. Atul Kumar Shah, D.A.G. with Mrs. Mamta Joshi, Brief
Holder, for the State of Uttarakhand/1.

Hon'ble Sharad Kumar Sharma, J (Oral)

Mines and Minerals (Regulation and Development) Act, 1957, is an Act, which has its independent existence since having being enforced by the Parliament in the 8th year of Republic, with effect from 01.06.1958. Mining minerals have been defined under sub-section (e) of section 3 of the Act, which is inclusive of river bed material, which are permitted to be lifted only upon the requisite permission being granted to the person concerned, for permitting the lifting the RBM.

2. In the instant case, an FIR was got registered as against the present applicants on the ground that on the vehicle bearing Registration No.UK 04-CB-0036, the same upon being apprehended by the competent officials, it was found that the vehicle was carrying the RBM, much beyond the permissible quantity and it was observed that it was about 80.10, quintals, in excess which was being carried in excess, then to the permitted quantity, under the licence.

3. Consequently, as a result of the registration of the FIR, being FIR No.13 of 2019, dated 15.10.2019, the Charge Sheet was submitted on which the cognizance has been taken, and the applicant has been summoned by the court of Judicial Magistrate, Nainital, in Criminal Case No.554 of 2020, "State Vs. Dungar Singh and others", for being tried for the offences under sections 379 and 411 of IPC.

4. An absolutely a legal issue, which has been argued by the learned counsel for the applicant is as to whether a cognizance for an offence under sections 379 and 411 of IPC, could at all be taken, to bring an offence covered by the Act of 1957, under the general penal provisions contained under the Indian Penal Code viz 379 and 411 IPC.

5. It has been argued by the learned counsel for the applicant, that the Act of 1957, is a self contained Act, self contained Act in the sense, that if section 21 of the Act of 1957, is taken into consideration, section 21 of the Act of 1957, itself provides with a penal clause, where a person to whom the license has been granted is found to be violating the conditions of the licence as contained under section 21 of the Act, the penal provision of an arrest and imposition of the penalty is contained under the Act of 1957 itself.

6. Learned counsel for the applicant submits, that if the FIR is taken into consideration, the allegation which had been leveled, which could be summarized is that the applicants were held to be a guilty of carrying the RBM in quantity in excess to the permissible quantity. Meaning thereby, the permission to lift RBM did existed in favour of the present applicants, but the only violation, which was alleged in the FIR was that of carrying of the excess quantity of the RBM, then what was actually permitted to be lifted by the present applicants, which has been quantified in the complaint itself, which has been registered by the respondents before the Police Station Betalghat, District Nainital. The reference of section 21 of the Act, is necessarily required to be taken into consideration, for the purposes of the present C482 Application, which is extracted hereunder:-

"21. Penalties. □ [(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1-A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both;

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.] (3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

[(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4-A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.] (5) Whenever any person raises, without any lawful authority, any mineral from any land, the State

Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

[(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.]"

7. If legislative intention of section 21 of the Act, is taken into consideration, sub-section (1) provides with that anybody who is found to have contravened the terms and conditions of the permission granted for lifting of the RBM, its on establishment of the offence, he could be punished with an imprisonment for a term which may extend to two years and a fine can be imposed upto Rs.25,000/- or with both.

8. In that eventuality, where sub-section (1) of section 21 of the Act, contains a penal implications for violation of the conditions of the permission granted, and that too under the special Act of 1957, the general Act of penalty contemplated under the IPC, which has been sought to be attracted in the instant case by brining the act within the ambit of penal sections 379 and 411 of the IPC, would be bad in the eyes of law.

9. He further extends his argument that if the contents of the FIR are taken into consideration, if at all it entails the commission of the offence, it will be an offence contained under sub-section (4) of section 21 of the Act, wherein, it provides that any person who transports or causes to be raised or transported the RBM, without a lawful authority, shall be liable to be seized by an officer or an authority specifically empowered for the said purpose under the Act.

10. The reference, herein, to the use of the word "any person", if the said expression it is read in consonance with the use of word "lawful authority", it means that it would be a person who though was already holding an authority to lift the RBM by lifts it beyond the permissible limit to bring an act within the ambit of an offence under sub-section (4) of section 21 of the Act. This would in fact be the case at hand, as per the averments and set of allegations made in the FIR, where the RBM loaded in the vehicle, which has been referred to in the FIR, was found to be carrying the RBM beyond the permissible quantity. Thus, when the Act itself provides for a penal provisions and when the Act, which has been complaint of in the FIR is within the ambit of penal section 21 of the Act, this Court is of the view that the general provision of the penal code will not be applicable, and no cognizance of it could be taken in view of a specific bar created under section 22 of the Act. Where it provides for that for any of the offences which are covered under the Act of 1957, which obviously would be inclusive of lifting of the RBM beyond the permissible limit, the cognizance could not be taken by any other court, except for the authority, which has been authorized by the Central Government or the State Government under the Act itself. Section 22 of the Act is extracted hereunder:-

"22. Cognizance of offences.□No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in

writing made by a person authorised in this behalf by the Central Government or the State Government."

11. In this clear-cut analogy, which could be drawn on a conjoint reading of section 21 and 22 of the Act of 1957, section 21 of the Act itself contains a penal provision, when sub section (2) of section 21 of the Act itself contains within in itself an unlawful act of lifting of RBM beyond the permissible limit.

12. In that eventuality, if at all, the cognizance could be taken for commission of the offences, falling within the ambit of section 21 of the Act, which would be the case at hand, it could be taken only by an authority which has been authorized by the Central or the State Government on its behalf as the case may be, and the general provisions of the penalty or the commission of the offence under sections 379 and 411 of IPC, as it has been sought to be attracted in the instant case by registration of the FIR, would not be available.

13. Hence, this Court is of the view that when special law bars a cognizance of the offence, which would be read in parlance to the cognizance taken by the order dated 17.02.2020, the cognizance itself would be in violation of the provisions contained under section 22 of the Act of 1957.

14. In that eventuality, while leaving the recourse available to the competent authority created under section 27 of the Act of 1957, authorized by the Central Government or the State Government to take cognizance of the offences covered under section 21 of the Act, the present C482 application would stands allowed, and as a consequence thereto, the proceedings of the Criminal Case No.554 of 2020, "State Vs. Dungar Singh and others", would hereby stand quashed, without prejudice to the rights of the competent authority created under the Act of 1957, to take cognizance to the offences covered under section 21 of the Act, in the light of the provisions contained under section 22 of the Act.

15. It is hereby directed that the Registry of this Court will supply the information of the judgment rendered today to the competent authorities under the Act of 1957, or at least to the Mining Officer created under the Act of 1957, to take an appropriate action as per section 27 of the Act.

16. Subject to the aforesaid, the C482 Application stands allowed.

(Sharad Kumar Sharma, J.) 07.11.2022 NR/