

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.140 of 2017

Arising Out of PS. Case No.-5 Year-2017 Thana- ROHTAS (AMJHOR) District- Rohtas

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1. M/s Aditya Multicom Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 2nd Floor, 12, Waterloo Street, Kolkata-700069 and branch office at C/o Shashi Kumar Singh, near Hotel Vandana, Shivganj, Pali Road, Dehri-on-sone, District Rohtas, through its Authorised Signatory, Kamlesh Gaurav, son of Shri Surendra Singh, resident of D/139, Keshari Nagar, P.O. Rajeev Nagar, P.S. Rajeev Nagar, District- Patna.
 2. The Chief Executive Officer, Sadashiv Prasad Singh, Son of Maleshwar Singh, Resident of Ganeshalay Jharudih, P.O. and P.S. Dhanbad, District Dhanbad, M/s. Aditya Multicom Private Limited, having its registered office at 2nd floor, 12, Waterloo Street, Kolkata- 700069 and branch office at C/o. Shashi Kumar Singh, near Hotel Vandana, Shivganj, Pali Road, Dehri-on-Sone, District- Rohtas.

... .. Petitioners

Versus

1. The State of Bihar through the Director General Of Police, Bihar, Patna
2. The Department of Mines and Geology, Government of Bihar, Patna, through its Principal Secretary.
3. The District Magistrate, Rohtas, Sasaram.
4. The Superintendent of Police Rohtas, Sasaram.
5. The Assistant Director, Mines and Geology, Rohtas, Sasaram.
6. The Officer-In-Charge, Rohtas Amjhor Police Station, District- Rohtas.

... .. Respondents

Appearance :

For the Petitioners : Mr.Suraj Samdarshi, Advocate
Mr. Sanjay Kumar, Advocate
For the State : Mr.Parth Sarthi GA-4
Mr. Mrigendra Kumar, AC to GA-4
Mr. Mithlesh Pd. Singh, AC to GA-4
For respondent no. 5 : Miss. Kalpana, Advocate



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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 18-02-2019

This writ petition has been filed by the petitioners for quashing the first information report (for short 'FIR') of Rohtas (Amjhor) P. S. Case No. 05 of 2017 registered under rules 6, 7 and 8 of the Bihar Minerals (Prevention of Illegal Mining, Transportation & Storage) Rules, 2003 (for short '2003 rules').

2. During pendency of the writ petition, since the police completed investigation and submitted charge-sheet before the court and the Judicial Magistrate, 1st Class, Dehri took cognizance of the offences vide order dated 27.02.2018 under rules 6, 7 and 8 of the 2003 rules, by way of preferring an interlocutory application, vide I. A. No.01 of 2019, the petitioners have sought for quashing the said order dated 27.02.2018.

3. Heard Mr. Suraj Samdarshi, learned counsel for the petitioners, Mr. Parth Sarthi, learned counsel for the State and Miss. Kalpana, learned counsel appearing for respondent no.5.

4. The impugned FIR was instituted on the basis of a written report submitted by the respondent no. 5 to the



Officer-in-charge, (Rohtas) Amjhor Police Station on 07.01.2017 wherein it has been stated that on 06.01.2016 in a drive to check movement of vehicles overloaded with sand, 59 trucks loaded with sand over and above the capacity were intercepted near Ramdihra Sand Ghat. It is further stated that in respect of 10 wheeler and 12 wheeler trucks, challan of 400 cubic feet & 500 cubic feet respectively is to be issued whereas on such trucks, on an average 800-900 cubic feet sand was found loaded. The excess quantity of sand over and above indicated in the challan so issued was loaded with the complicity of the settlee of the sand ghat and its manager. On the basis of said information, it has been alleged that the provisions of clause 9 and 16 of the work order issued by the office have been violated. Clause 9 requires the amount paid to be mentioned on the challan, but the same has not been mentioned whereas clause 16 provides that water should not spill on the roads from the trucks laden with sand, but from all 59 trucks water was spilling on the road. Because of the aforesaid illegalities apart from the loss of revenue caused to the State, rules 7 and 8 of the 2003 rules have also been violated.

5. On receipt of the said written report, the Officer-in-charge of Rohtas (Amjhor) Police Station registered



the FIR against the petitioner no. 2 and investigation was taken up.

6. On completion of investigation, charge-sheet has been submitted, vide charge-sheet No.61 of 2017 against the petitioner no. 2 and one Mahesh Prasad Singh, Manager of petitioner no. 1 whereafter, vide order dated 27.02.2018, the learned Judicial Magistrate, 1st Class has taken cognizance of the offences under rules 6, 7 and 8 of the 2003 rules.

7. Mr. Suraj Samdarshi, learned counsel appearing for the petitioner has submitted that petitioner no. 1 is a company incorporated under the Indian Companies Act, 1956. Petitioner no. 2 is its Chief Executive Officer. In pursuance to the notice inviting tender dated 08.01.2015 issued by the Department of Mines and Geology for the districts of Rohtas and Aurangabad, the petitioner no. 1 being the highest bidder was assigned the work order whereafter sand ghats of the said two districts were settled with petitioner no. 1 for 5 years and the work order was issued in its favour vide letter no.28 dated 23.01.2015.

8. He has contended that even after going by the entire contents of the FIR, no offence is made out either against the settlee or against petitioner no. 2, who has got no co-



relation with the transporting agents. The presumption that each and every truck was loaded with 800-900 cubic feet is only an eye estimation.

9. He pleaded that rule 6 of the 2003 rules refers to establishment of check posts and barriers and weighment and inspection of minerals in transit. There is no violation of either any act or regulation by the petitioners. As far as overloaded vehicles are concerned, the petitioners cannot be held responsible. For the said act, transporters individually were to be made responsible.

10. He argued that even if it is presumed that the overloading of the vehicles was at the instance of the petitioners then in terms of Rule 26 of the Bihar Minor Mineral Concession Rules, 1972 (for short '1972 rules') read with clause 22 of the settlement agreement, the settlee could have been held liable for payment of extra royalty, but by no stretch of imagination, a criminal liability could have been fastened against them.

11. He urged that the allegations are under rules 7 and 8 of the 2003 rules and as per Section 22 of the Mines and Mineral (Development and Regulation) Act, 1957 (for short '1957 Act') and rule 9 of the 2003 rules, no court could have taken cognizance of any offence punishable under the Act or



any rules made thereunder, except upon a complaint in writing made by a person authorized in this behalf by the Central Government or the State Government.

12. In support of his submission, he has placed reliance on the decisions in **Pancham Singh Vs. State of Jharkhand** [Cr. Rev. No. 312 of 2004 decided on 09.10.2012], **Mahendra Kumar Yadav Vs. State of U.P.** [Cr. Misc. Writ Petition No. 14971 of 2014 decided on 05.09.2014], **Jagjit Singh Vs. State of Punjab** [Cr. Misc. No. M-18815 of 2014 decided on 28.04.2015] and **Harmela Ram Vs. State of Haryana** [Cr. Misc. No. M-526 of 2012 decided on 29.04.2013] passed by Jharkhand High Court, Allahabad High Court and Punjab and Haryana High Court, respectively.

13. He submitted that even otherwise in absence of the settlee (petitioner no. 1), the petitioner no. 2 or any other office bearer of the settlee Company cannot be prosecuted as there is no provision for vicarious liability under the 1957 Act or the rules made thereunder.

14. *Per contra*, Mr. Parth Sarthy, learned counsel appearing for the State has submitted that from the allegations made in the FIR, it would be manifest that the vehicles carrying sand in excess of permissible limit were intercepted and



inspected. The sand loaded on the vehicles was mined from Ramdihra Sand Ghat under Amjhor Police Station. The alleged act of the petitioners was violative of clause 9 and 16 of the work order. Clause 9 of the work order prescribes for mentioning the value of sand on transit pass, which was found missing and clause 16 stipulates that settlee would ensure that water does not drip on the road from the vehicle, but water was found dripping from all 59 vehicles intercepted on the relevant date.

15. He pleaded that since the petitioner no. 2 was the Chief Executive Officer of the settlee Company and had violated the terms of work order and rules 6, 7 and 8 of the 2003 rules, he cannot preclude himself from the prosecution.

16. He argued that since the writ petition was initially filed for quashing the FIR and during pendency of the writ petition, the police have completed investigation and submitted a report under Section 173(2) of the Code of Criminal Procedure (for short 'CrPC') and, on perusal on the materials available on record, the learned Magistrate has taken cognizance of the offence, it would not be proper for this Court to interdict the FIR at this belated stage.

17. While adopting the submissions made by the



learned counsel for the State, Miss. Kalpana, learned counsel appearing for respondent no. 5 has submitted that on many occasions, the petitioners have violated terms and conditions of the agreement and have been regularly engaged in activity of movement of vehicles overloaded with sand. During inspection carried by the police force and the officials of the Mines Department on the relevant date, it was detected that many vehicles were carrying sand beyond the loading capacity and had more than the quantity mentioned on challans.

18. She contended that the petitioners were liable for establishing a weighbridge and, only after measurement of the quantity, challans could have been issued, but contravening the relevant provisions challans showing lesser quantity than the actual loading of the sand on the vehicles were issued.

19. The alleged act on the part of the petitioner no. 2 would make it manifest that huge loss has been caused to the State exchequer for which the police case was instituted and, in course of investigations, the allegations were found true.

20. She urged that since cognizance has already been taken by the court of competent jurisdiction on the basis of materials collected in course of investigation, the petitioner no. 2



must face trial before the court below and prove his innocence through evidences.

21. I have heard learned counsel for the parties and carefully perused the record.

22. It would be manifest from the pleadings of the parties that the main thrust of the allegations made in the FIR is that the petitioners have violated clauses 9 and 16 of the work order dated 23.01.2015 and, since 59 vehicles were found overloaded with minor minerals, the FIR was registered under rules 6, 7 and 8 of the 2003 rules.

23. It would also be manifest that the petitioner no. 1 is a settlee for five years of Ramdihra Sand Ghat for the district Rohtas and Aurangabad since 23.01.2015 and the petitioner no. 2 is its Chief Executive Officer. The petitioner no. 1 has not been made accused whereas petitioner no. 2 Sadashiv Prasad Singh has been made accused in the FIR in the capacity of the Chief Executive Officer of petitioner no. 1 and, along with him, one Mahesh Prasad Singh has also been sent up for trial being the Manager of petitioner no. 1.

24. Since the FIR has been instituted for violation of rules 6, 7 and 8 of the 2003 rules, it would be apposite to extract them along with rule 9 of the aforesaid rules



hereunder :-

“6. Establishment of check-posts and barriers and wieghment and inspection of minerals in transit.– (1) If the State Government considers it necessary to do so with a view to check the transport and storage of minerals transported without lawful authority, it may direct the setting up of check-post or erection of barrier or both at any place or places within the State by an order in writing.

Provided that the setting up of a check-post or erection of a barrier shall be notified in the Official Gazette.

(2) Any officer authorised by the State Government in this behalf may check carrier carrying mineral at any place and the person in-charge of the carrier shall furnish a valid “Transit Pass” in the prescribed Form and other particulars such as bill or receipt or delivery note on demand by that officer.

(3) At every check-post or barrier set up under sub-rule (1) or at any other place when so required by the officer in-charge of the check-post or the barrier or Competent Officer or any other authorised officer, the person in-charge of the carrier shall stop the same for checking and verification of the



mineral in transit and also inspection of all records and documents relating to minerals in possession of such person and before in-charge of the check-post or the barrier or Competent Officer or any other authorised officer and furnish his name and address as also that of the owner of the carrier and the name and address of both the consignor and the consignee. After checking the mineral and carrier the officer in-charge of the check-post or the barrier or Competent Officer or any other authorised officer as aforesaid shall put his signature on the Transit Pass.

(4) If the officer in-charge of the check-post or Competent Officer or any other authorised officer has reasons to believe that the mineral is not according to details of the transit pass, such officer, or any other authorised officer, shall recover from the person in-charge of the carrier the value of the mineral and royalty with other taxes.

(5) (a) The officer-in-charge of the check-post or the barrier or Competent Officer or any other authorised officer shall have the power to seize the mineral along with the carrier in transit, if it is not accompanied with a valid transit pass or if the person in-



charge of the carrier refuses to make the payment under sub-rule-4.

(b) The officer in-charge of the check-post or the barrier or Competent Officer or any other authorised officer shall give a receipt of such mineral and carrier seized by him to the person from whose possession or control it is seized.

(c) The officer-in-charge of the check post or Competent Officer or authorised officer may direct the person in-charge of the carrier to carry the mineral to the nearest police station or check post or barrier.

Provided that if the person in-charge of the carrier, refuses to carry the mineral and the carrier to the nearest police station or check post or barrier the officer in-charge or Competent Officer empowered under sub-rule (3) may seize the carrier and take the same in his possession.

Provided that if the officer in-charge of the check post or Competent Officer or any authorised officer if identified the carrier owner or mines owner he will release seized mineral along with carrier on his personal



bond stating therein the value of the mineral and royalty with taxes and shall undertake to deposit within a week from the date of furnishing bond of the person in-charge of the carrier willing to take the seized mineral along with the carrier.

7. Storage of major mineral and minor mineral beyond lease hold area.– (1) Every person who carries business of major minerals beyond any lease hold area shall obtain a stockist licence from the Competent Officer or any officer authorised by the State Government in Form “C” of this rule.

Provided that for minor mineral the licence under Form ‘L’ “except for stone in the form of boulders brought from outside the State of Bihar and from within the State of Bihar. “shall be obtained as per the provision of Rule 49 of Bihar Minor Mineral Concession Rules, 1972.

Provided further that no person shall be permitted to erect, install or operate a stone crusher outside a lease hold area or stock stone mineral in any form outside the lease hold area for the purpose of being used by a stone crusher;

Provided further that the existing



stockist licence held for stone mineral used for crusher shall remain operational till the validity of their licence period, on the condition of the licensee abiding by all the relevant rules/provisions of law.

(a) The number of stone stockist licence for use of crusher shall be determined in in consonance to the number of leases and its capacity of stone production of a particular area/district as well as capacity of crusher unit.

(b) The number of the stone stockist licence for the use of crusher shall be determined by the State Government on the recommendation of the Collector.

(c) The determined number of stone stockist licence for the use of crusher shall be notified in Official Gazette by the State Government.

(d) Notwithstanding anything contained contrary to this Rule and in Bihar Minor Mineral Concession Rules, 1972, the grant of stone stockist licence shall be strictly on the basis of Public Auction/Tender to the highest



bidder/Tenderer as notified by State Government. The State Government shall fix the minimum reserve deposit for the stone stockist licence with the recommendation of Collector. The reserve deposit shall be fixed with regard to district, location, population, state of civil construction, state of industrial construction, state of urbanisation and place of industrial growth in different area of the State.

Provided if the applicants are less than the numbers, as fixed by the State Government, Stone Stockist Licence for use of crusher, Collector of a district after having a prior approval of the State Government may grant licence on payment of agreed amount as decided by the Collector and approved by the State Government.

(e) The State Government may allot upto 20% of total number of stone stockist licence determined for a particular area/district to the nearby district in the interest of industrial development as well as mineral development with the recommendation



by the Collector and Dy. Director of the Circle.

(f) The Competent Officer with the approval of the Collector shall publish in a local newspaper widely read in the area with regard to number of stone stockist licences to be granted for use of crusher giving at least one month time for an application under Rule 7(i) (g) proviso of Bihar Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules 2003.

(g) The application in prescribed Form "Ca" seeking a stone stockist licence for the use of crusher shall be accompanied in a prescribed manner to the Competent Officer:-

(i) A non refundable treasury challan of Rs. 5000/- (five thousand).

(ii) A character certificate issued by the concerned District Superintendent of Police with regard to the antecedent.

(iii) No objection certificate



from Pollution Control Board for establishment of crusher unit.

(iv) A license under Bihar Factory Rules 1950 of The Factories Act 1948 or an affidavit stating that he will submit licence issued under Bihar Factory Rules, 1950 of the Factories Act, 1948 within two months after receiving the stockist licence.

(h) Preference may be given to any person/persons in cluster of crushing machines within 8 kms. from the leasehold/mining areas.

(i) The period of stone stockist licence for the use of crusher shall not be more than 20 years with following condition.

(i) The auction bid/tender amount shall be deposited in yearly basis in equal installments within seven years. Each equal installment shall be deposited before 31st December.

(ii) After payment of installment



of auction bid/tender amount or agreed amount up to seven years, renewal of stone stockist licence for the use of crusher shall be made on the deposit of Rs.5000/- every year up to thirteen years.

(iii) The State Government shall issue a guideline from time to time in this regard.

(j) Default in payment of any installment till prescribed date, a 24 percent simple interest shall be charged up to six month and after that action for cancellation of licence shall be taken.

(k) Every stone stockist licence holder for the use of crusher shall maintain a register in Form 'G' of this Rule.

(2) Every application for stockist licence of major minerals shall be accompanied with following particulars:-

(a) Every application for stockist licence shall be accompanied with a fee of Rs.5000/-.

(b) Every such licence shall be valid



for one calendar year.

(c) Every such licence may be renewed on application which shall be accompanied by a fee of Rs.1000/-.

(d) Every such licence holder shall maintain proper accounts of purchase and sale of all such minerals in a register in Form "D" which shall be produced before the Competent Officer or any other officer authorised by the State Government for inspection.

8. Penalties:

(a) Whoever contravenes the provisions of sub-rule (4), (5a) and (5c) of Rule-6 shall be punished by the Competent Court with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand along with price of the mineral and royalty with other taxes.

(b) Any mineral along with carrier seized under sub-rule (4), (5a) and (5c) of Rule 6 shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-rule (5a) of this Rule



6 and shall be disposed of in accordance with the directions of such court.

(c) The Competent Officer or any other authorised officer shall have power to seize the mineral along with tools, if any, who contravenes the provisions of sub Rule (1) and (2) of Rule 7.

(d) Whoever contravenes the provisions of sub-rule (1) and (2) of Rule 7 shall be punished by the Competent Court with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand along with price of the mineral and royalty with other taxes or shall be liable to be confiscated by an order of the Court competent to take cognizance of the offence under sub rule (3) of this Rule 7 and shall be disposed of in accordance with the directions of such Court.

(e) Notwithstanding anything contained in the Code of Criminal Procedure 1973, an offence under sub-rule (4), (5a) and (5c) of Rule 6 and Rule 7 shall be cognizable.



9. Cognizance of offence.- No court shall take cognizance of any offence punishable under this rule except upon complaint in writing made by a person authorised in this behalf by the State Government or a person described in rule 5 and rule 7 of this Rule.”

25. From perusal of the aforesaid rules, it would be evident that rule 6 of the 2003 rules reveals that the same is concerned with the establishment of check-posts and barriers and weighing and inspection of minerals in transit.

26. Sub-rule 4 of rule 6 of the 2003 rules confers power upon the Officer-in-charge of the check-post or Competent Officer or any other authorised officer to recover from the person in-charge of the carrier the value of mineral and royalty with other tax if he has reason to believe that mineral is not according to details of the transit pass.

27. Sub-rule 5 of rule 6 of the 2003 rules gives power to the Officer-in-charge of the check-post or the barrier or competent officer or any other authorised officer to seize the minerals along with the carrier in transit, if it is not accompanied with a valid transit pass or if the person in-charge of the carrier refuses to make the payment under sub-rule 4.



28. Similarly, rule 7 of the 2003 rules provides for storage of major mineral and minor mineral beyond lease hold area.

29. The first proviso to the rule 7 of the 2003 rules provides that for minor mineral the licence under Form 'L' except for stone in the form of boulders bought from outside the State of Bihar and from within the State of Bihar shall be obtained as per the provision of rule 49 of the 1972 rules.

30. Rule 8 of the 2003 rules prescribes penalty for contravention of sub-rule (4), (5)(a) and (5)(c) of rule 6 of the 2003 rules. Clause (a) of rule 8 provides that any person, who contravenes the aforesaid provisions may be punished by the competent court with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand along with price of the mineral and royalty with other taxes. Sub-rule (b) of rule 8 of the 2003 rules provides that any mineral along with carrier seized under sub-rule (4), (5a) and (5c) of Rule 6 shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-rule (5a) of Rule 6 and shall be disposed of in accordance with the directions of such court.



31. Rule 9 of the 2003 rules provides that no court shall take cognizance of any offence punishable under this rule except upon complaint in writing made by a person authorised in this behalf by the State Government or a person described in rule 5 and rule 7 of the said rules.

32. The 2003 rules was brought in by an amendment which was done in purported exercise of powers conferred under Section 15 read with Section 23C of the 1957 Act.

33. Section 23C of the 1957 Act, which gives powers to the State Government to make rules for preventing illegal mining, transportation and storage of minerals reads as under:-

“23C. Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals.—(1) The State Government may, by notification in the Official Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

(2) In particular and without prejudice to the generality of the foregoing power, such



rules may provide for all or any of the following matters, namely:—

(a) establishment of check-posts for checking of minerals under transit;

(b) establishment of weigh-bridges to measure the quantity of mineral being transported;

(c) regulation of mineral being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;

(d) inspection, checking and search of minerals at the place of excavation or storage or during transit;

(e) maintenance of registers and forms for the purposes of these rules;

(f) the period within which and the authority to which applications for revision of any order passed by any authority be preferred under any rule made under this section and the fees to be paid therefor and powers of such authority for disposing of such



applications; and

(g) any other matter which is required to be, or may be, prescribed for the purpose of prevention of illegal mining, transportation and storage of minerals.

(3) Notwithstanding anything contained in section 30, the Central Government shall have no power to revise any order passed by a State Government or any of its authorised officers or any authority under the rules made under sub-sections (1) and (2).”

34. Section 23C of the 1957 Act has to be read together with Section 22 of the 1957 Act which provides that 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.

35. Thus, for the offence alleging violation of any rule under the 2003 rules framed under Section 23C of the 1957 Act, an FIR cannot be instituted rather a complaint in writing has to be made by a person authorised in this behalf.

36. The word ‘complaint’ has not been defined under the 1957 Act or the rules made thereunder. In absence of



any definition of 'complaint' under the 1957 Act or the rules made thereunder, one has to look to the definition of 'complaint' given under the CrPC.

37. Section 2(d) of the CrPC defines complaint.

It reads as under :-

“2(d) “Complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.”

38. In view of the definition of the 'complaint' in Section 2(d) of the CrPC, there cannot be any doubt that an FIR cannot be treated as a complaint. The moment, an FIR is instituted in respect of any offence, it is required that the same be investigated and once the investigation is completed, a report is required to be filed before the court under Section 173(2) of the CrPC. The police report submitted under Section 173(2) of the CrPC cannot be treated to be a complaint.

39. Thus, it would be evident that Section 22 of the 1957 Act puts a restriction on the court to take cognizance of any offence punishable under the 1957 Act or any rule made



thereunder except upon a written complaint made by a person authorised in this behalf by the Central Government or the State Government. Similarly rule 9 of the 2003 rules puts a restriction on the court to take cognizance of any offence under the said rules except upon a complaint.

40. In the instant case, the investigation has commenced pursuant to the institution of an FIR which culminated into filing of a police report pursuant to which the court has taken cognizance of the offence. Indisputably, neither the FIR nor the police report/charge-sheet can be treated to be a complaint.

41. Hence, the institution of the FIR, investigation conducted by the police, the report submitted on completion of investigation and cognizance taken by the court are all contrary to the provisions prescribed under the 1957 Act and the 2003 rules.

42. Learned counsel for the petitioner has rightly placed reliance on the decisions of the different High Courts in this regard. In similar set of facts, Jharkhand High Court in the case of **Pancham Singh Vs. State of Jharkhand** (Supra) quashed the entire proceedings, which was initiated on the basis



of an FIR holding the same to be contrary to law laid down by the Supreme Court in the case of **Jeewan Kumar Raut vs. CBI [(2009) 7 SCC 526]**. Similarly, Allahabad High Court in the case of **Mahendra Kumar Yadav Vs. State of U.P.** (Supra) held that lodging of the FIR alleging contravention of the provisions of 1957 Act and the rules made thereunder is not maintainable and, therefore, the FIR was quashed. Again, the Punjab and Haryana High Court has taken the similar view in the case of **Jagjit Singh Vs. State of Punjab** (Supra) and **Harmela Ram Vs. State of Haryana** (Supra).

43. As far as the contention of learned counsel for the State that initially, an application was filed for quashing of the FIR and, during the pendency of the writ petition, investigation itself has been completed and cognizance has been taken and, thus, the writ petition has become infructuous is concerned, the same cannot be sustained in view of the following observations made by the Supreme Court in the case of **Anand Kumar Mohatta and Anr. vs. State (Govt. of NCT of Delhi) Department of Home and Anr. [AIR 2019 SC 210]**:-

“17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of



process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.”

44. While observing so, the Supreme Court has taken note of its earlier decision in **Joseph Salvaraj A. vs. State of Gujarat [(2011) 7 SCC 59]**. In the case of **Joseph Salvaraj A.** (Supra), the Supreme Court while deciding the question whether the High Court could entertain the 482 petition for quashing of an FIR, when the charge-sheet was filed by the police during the pendency of the 482 petition observed: -

“ Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would



show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not."

45. Since there is an express legal bar in the 1957 Act and the rules made thereunder, a prosecution for violation of any provision of the 2003 rules could not have been initiated on the basis an FIR. Hence, allowing the prosecution to continue against petitioner no. 2 or any other person on the basis of an FIR would be an abuse of the process of the court. The ends of justice requires that such proceeding be quashed.

46. In view of my aforesaid findings, I do not think it necessary to deal with the issue of vicarious liability raised in the present application.

47. Accordingly, the impugned FIR of Rohtas (Amjhor) P. S. Case No. 05 of 2017, the report submitted in the said case vide charge-sheet no.61 of 2017 and the order dated 27.02.2018 whereby cognizance of the offences has been taken by the learned Judicial Magistrate, 1st Class, Dehri in the said



case are set aside.

48. The writ petition stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.03.2019
Transmission Date	09.03.2019

