IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (Cr.) No. 225 of 2023

Abhay Kumar Singh **... Petitioner**

-Versus-

1. The State of Jharkhand
2. The Superintendent of Police, Hazaribag
3. The Sub-Divisional Officer, Sadar Hazaribag, District- Hazaribag
4. The District Supply Officer, Hazaribag, District- Hazaribag
5. The District Mining Officer, Hazaribag, District- Haza
6. The In-charge Consultant, Jharkhand State Pollution Control Board, District- Hazaribag
7. The Investigating Officer, Muffasil P.S., District- Hazaribag

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. R.S. Mazumdar, Sr. Advocate
Mr. Prabhat Kumar Sinha, Advocate
For the State : Mr. Manoj Kumar, G.A.-III

06/22.08.2023 Heard Mr. R.S. Mazumdar, learned senior counsel appearing for the petitioner and Mr. Manoj Kumar, learned counsel for the State.

2. This petition has been filed for quashing of the entire criminal proceeding in connection with Muffasil P.S. Case No.91/2023 registered for the offences under Section 379/34 of the Indian Penal Code, Section 4/21 of Mines and Minerals (Development and Regulation) Act, 1957, Rules 4/54 of Jharkhand Minor Mineral Concession Rules, 2004 (With Amendment), Section 09/13 of Jharkhand Mineral (Prevention of Illegal Mining Transportation and Storage) Rule, 2017, Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, pending in the court of the learned Chief Judicial Magistrate, Hazaribag. The prayer is further made for direction upon the respondents to unseal the petitioner's factory.

3. The FIR has been registered on the typed report of informant Ajit

Kumar, the District Mining Officer, Hazaribag dated 15.04.2023 submitted to the Officer In-charge, Muffasil Police Station, Hazaribag alleging therein that an enquiry was made in M/s Super Coke Industries situated at Demotand, Hazaribag jointly of the officers including the informant. It is stated that M/s Super Coke Industries is authorized for the processing of coal minerals by the District Mining Office, Hazaribag, where sale of coal is to be made after processing the same which were purchased from colliery through e-transporting permit. It is alleged that during investigation, it has come that without taking permission ROM coal was being loaded in truck. The investigating team has found 20.00 ton coal loaded on the truck bearing registration no. JH-02AT-4845. According to monthly return filed by the company in the month of March, 2023, the stock of coal at the site has been shown as 883.69 tons and as per the daily coal register maintained by the company, the stock of coal stored till 14.04.2023 is 1066.61 tons. It is also alleged that during investigation total stock of 700 tons coal has been found by the investigating team and accordingly 366.61 tons coal has been transported without e-transportation challan. The informant further alleged that the factory operator was involved in illegal trade of coal under the garb of Dealers registration. It is further alleged that factory operator was operating the factory without complying with the consent to operate issued by the Pollution Control Board. Thereafter, coal available on site and truck bearing registration no. JH-02AT-4845 loaded with 20.00 ton coal has been seized after preparing seizure list and the factory and driver of seized vehicle also apprehended by the investigating team but they did not give any satisfactory answers regarding above and, therefore, the present case has been filed.

4. Mr. Mazumdar, learned senior counsel appearing for the petitioner submits that on 15.04.2023, the alleged inspection took place in the premises of the petitioner's factory, namely M/s Super Coke Industries, Hazaribag. On the same day, the FIR was lodged on the basis of written statement of the District Mining Officer, Hazaribag. He further submits that M/s Super Coke Industries is registered by the Directorate of Industries, Government of Jharkhand on 15.09.1990, contained in Annexure-2. He submits that the factory is registered for processing of coal under Dealers Registration on 17.01.2020, contained in Annexure-3. He further submits that the petitioner obtained license under Rules 4 to 10 of the Jharkhand Factories Rules and Section 6(1) of the Factories Act and the license is valid till 31.12.2030. He also submits that the petitioner obtained Consent to Operate (CTO) under Section 25/26 of Water Act and Section 21 of Air Act from Jharkhand State Pollution Control Board. The consent to operate is valid till 31.12.2027 and the said consent was provided on 07.02.2023, contained in Annexure-5. The petitioner is already registered under the GST and the GST registration certificate was issued to the petitioner on 26.09.2017, contained in Annexure-6. He submits that M/s Super Coke Industries entered into Fuel Supply Agreement (FSA) with CCL on 18.08.2020 under Non-Regulated Sector Linkage, contained in Annexure-7. He submits that Form-E is the report which has already been made to the concerned Department of the Government of Jharkhand and being approved, it is being issued by the Government in Form-H, contained in Annexure-8 Series. He further submits that time and again the competent authority has inspected the factory premises of the petitioner. The said company has been accorded permission by CCL to dispose of undersize coal

@ 26% of total quantity supplied on 20.02.1991, contained in Annexures-10 and 10/1. In this background, he submits that the entire case is maliciously filed against the petitioner. He also submits that the allegation under Section 4/21 of the MMDR Act is not maintainable on the ground that directly FIR has been registered bypassing the mandatory provision of Section 22 of the MMDR Act, which says that in case of offences under the MMDR Act, a complaint in writing has to be filed by an authorized person either by the Central Government or State Government. He further submits that the petitioner is not engaged in mining, however, the case has been lodged under the said rules and regulations of Jharkhand Minor Mineral Concession Rules, 2004. He submits that so far as the allegation under Rule 9/13 of the Jharkhand Mineral (Prevention of Illegal Mining Transportation and Storage) Rule is concerned, the petitioner regularly submits details of procured, processes and transported coal, contained in Annexure-8 Series. He submits that in view of Consent to Operate, no case under the Water Act and Air Act is made out. According to him, Section 379 of the Indian Penal Code is also not made out as the petitioner was having a valid document for operation of the said factory. He submits that on the same day, the factory premises of the petitioner has been sealed, which is against the mandate of law and the police is not authorized to do so. To buttress this arguments, he relied upon the judgment passed by the Hon'ble Supreme Court in ***Nevada Properties Private Limited through its Directors v. State of Maharashtra and another; [(2019) 20 SCC 119]***. He refers paragraphs 2, 9, 11, 21, 25, 29, 31, 32, 33, 41 and 49 of the said judgment, which are quoted hereinbelow:

> "***2.*** *For the sake of convenience, we have treated the*

criminal appeal arising out of Special Leave Petition (Criminal) No. 1513 of 2011, filed by Nevada Properties Pvt. Ltd., as the lead case. This appeal arises from the judgment of the High Court of Judicature at Bombay dated 29-11-2010 [Sudhir Vasant Karnataki v. State of Maharashtra, 2010 SCC OnLine Bom 1808] wherein the majority judgment has held that the expression "any property" used in sub-section (1) of Section 102 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") does not include immovable property and, consequently, a police officer investigating a criminal case cannot take custody of and seize any immovable property which may be found under circumstances which create suspicion of the commission of any offence. According to the majority judgment, earlier decision of the Division Bench of the same High Court in Kishore Shankar Signapurkar v. State of Maharashtra [Kishore Shankar Signapurkar v. State of Maharashtra, (1997) 4 LJ 793 (Bom)] lays down the correct ratio and the contrary view expressed in Bombay Science & Research Education Institute v. State of Maharashtra [Bombay Science & Research Education Institute v. State of Maharashtra, 2008 SCC OnLine Bom 1272 : 2008 All MR (Cri) 2133] does not lay down the correct law. The minority view holds that the police officer has power to seize any property, whether movable or immovable, under Section 102 of the Code and the decision of the Division Bench in Bombay Science & Research Education Institute [Bombay Science & Research Education Institute v. State of Maharashtra, 2008 SCC OnLine Bom 1272 : 2008 All MR (Cri) 2133] lays down the correct law and the ratio in Kishore Shankar Signapurkar [Kishore Shankar Signapurkar v. State of Maharashtra, (1997) 4 LJ 793 (Bom)] is not good law.

9. *Reference in this regard can also be made to Jagdish Chander v. State [Jagdish Chander v. State, 1989 SCC OnLine Del 403 : (1990) 40 DLT 233] , wherein the petitioner had challenged the seizure action of the police on the ground that the word "seizure" appearing in Section 102 of the Code would imply actual taking of possession and, therefore, would not include immovable property. This contention was not answered and left open as the Delhi High Court came to the conclusion that the seizure order therein under Section 102 of the Code was not in accordance with the statutory requirement as the property should be discovered under circumstances which create a suspicion of the commission of an offence, that is, the police officer should come across certain property in circumstances which create in his mind a suspicion that an offence has been committed. Section 102, it was held, would not be attracted where the property has not been traced or discovered which leads to a suspicion of an offence having been committed. Discovery of property should precede the detection of crime.*

11. *Tapas D. Neogy [State of Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685 : 1999 SCC (Cri) 1352] had also referred to the judgment of a Single Judge of the Madras High Court in Bharat Overseas Bank v. Minu Publication [Bharat Overseas Bank v. Minu Publication, 1988 MLW (Cri) 106] ,*

which had made reference to Sections 451, 452, 453, 456 and 457 of the Code to observe that these provisions seek to reimburse or compensate victims of crime and bring about restoration of the property or its restitution. The provision empowering seizure was necessary to preserve the property for the purpose of enabling the criminal court to pass suitable orders under the aforesaid provisions at the conclusion of the trial. The judgment also refers to restoration of immovable property under certain circumstances dealt with under Section 456 of the Code.

21. *Section 451 empowers the criminal court to pass an order of proper custody of "any property" pending trial or inquiry. The court can also direct disposal in certain circumstances. Explanation to Section 451 states that for the purpose of the said section, "property" includes property of any kind or document which is produced before the court or which is in its custody or any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence. Section 451 applies during or pending trial, or inquiry [the expression "inquiry" is defined in Section 2(g) of the Code].*

25. *Section 457 applies when a property has been seized by any police officer and is reported to a Magistrate under the provisions of the Code and such property is not produced before a criminal court during the course of inquiry or trial. The expression "not produced before a criminal court" used in Section 457 of the Code is significant. Thus, this provision applies to the property seized under Section 102 of the Code, but not produced during the trial or inquiry. In common parlance, the word "produced" is an expression used to signify actual or physical production which would apply to movable property. Immovable property cannot be "produced" in a court.*

29. *Section 102 postulates seizure of the property. Immovable property cannot, in its strict sense, be seized, though documents of title, etc. relating to immovable property can be seized, taken into custody and produced. Immovable property can be attached and also locked/sealed. It could be argued that the word "seize" would include such action of attachment and sealing. Seizure of immovable property in this sense and manner would in law require dispossession of the person in occupation/possession of the immovable property, unless there are no claimants, which would be rare. Language of Section 102 of the Code does not support the interpretation that the police officer has the power to dispossess a person in occupation and take possession of an immovable property in order to seize it. In the absence of the legislature conferring this express or implied power under Section 102 of the Code to the police officer, we would hesitate and not hold that this power should be inferred and is implicit in the power to effect seizure.*

31. *The expression "circumstances which create suspicion of the commission of any offence" in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not "any property" is required to be*

seized. The word "suspicion" is a weaker and a broader expression than "reasonable belief" or "satisfaction". The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences.

32. *In case and if we allow the police officer to "seize" immovable property on a mere "suspicion of the commission of any offence", it would mean and imply giving a drastic and extreme power to dispossess, etc. to the police officer on a mere conjecture and surmise, that is, on suspicion, which has hitherto not been exercised. We have hardly come across any case where immovable property was seized vide an attachment order that was treated as a seizure order by police officer under Section 102 of the Code. The reason is obvious. Disputes relating to title, possession, etc., of immovable property are civil disputes which have to be decided and adjudicated in civil courts. We must discourage and stall any attempt to convert civil disputes into criminal cases to put pressure on the other side (see Binod Kumar v. State of Bihar [Binod Kumar v. State of Bihar, (2014) 10 SCC 663 : (2015) 1 SCC (Cri) 203]). Thus, it will not be proper to hold that Section 102 of the Code empowers a police officer to seize immovable property, land, plots, residential houses, streets or similar properties. Given the nature of criminal litigation, such seizure of an immovable property by the police officer in the form of an attachment and dispossession would not facilitate investigation to collect evidence/material to be produced during inquiry and trial.*

33. *As far as possession of the immovable property is concerned, specific provisions in the form of Sections 145 and 146 of the Code can be invoked as per and in accordance with law. Section 102 of the Code is not a general provision which enables and authorises the police officer to seize immovable property for being able to be produced in the criminal court during trial. This, however, would not bar or prohibit the police officer from seizing documents/papers of title relating to immovable property, as it is distinct and different from seizure of immovable property. Disputes and matters relating to the physical and legal possession and title of the property must be adjudicated upon by a civil court.*

41. *Sub-section (1) of Section 102 empowers a police officer to seize any property which may be alleged or suspected to have been stolen. Theft can take place only of movable property and not of immovable property. In my view, the word "seized" has been used in the sense of taking actual physical custody of the property. Sub-section (3) of Section 102 provides that where it is difficult to conveniently transport the property to the court or there is difficulty in securing proper accommodation for the custody of the property, then the property can be given to any person on his executing a bond. This per se indicates that the property must be capable of production in court and also be capable of being kept inside some accommodation. This obviously cannot be done with immovable property.*

> ***49.*** *In view of the above, I would answer the reference by holding that the phrase "any property" in Section 102 will only cover movable property and not immovable property."*

5. Learned senior counsel for the petitioner further submits that with regard to MMDR Act and other Sections of the Indian Penal Code, the matter is further well settled in view of the judgment passed by the Hon'ble Supreme Court in ***Kanwar Pal Singh v. State of Uttar Pradesh and another; [(2020) 14 SCC 331]*** . He refers paragraphs 15 and 16 of the said judgment, which are quoted hereinbelow:

> ***"15.*** *We would again advert to the decision in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] , which had overruled the decision of the Calcutta High Court in Seema Sarkar v. State [Seema Sarkar v. State, 1994 SCC OnLine Cal 277 : (1995) 1 Cal LT 95] wherein the High Court held the proceedings to be invalid and illegal as the Magistrate had taken cognizance on the basis of a charge-sheet submitted by the police under Section 21(2) of the MMDR Act, 1957 and Section 379 IPC, observing that the cognizance was one that cannot be split or divided. The High Court had further observed that as the complaint was not made in terms of Section 22 of the MMDR Act, 1957, the cognizance was bad and contrary to law. We have already noted the decision of the Delhi High Court which had directed that FIR should not be treated as registered under Section 379 IPC but only under Section 21 of the MMDR Act, 1957. These decisions of the Calcutta High Court and the Delhi High Court were reversed and set aside by this Court in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] after referring to Section 26 of the General Clauses Act and the meaning of the expression "same offence", to observe that the offence under Section 21 read with Section 4 of the MMDR Act, 1957 and Section 379 IPC are different and distinct. The aforesaid reasoning compels us to reject the contention of the appellant that the action as impugned in the FIR is a mere violation of Section 4 which is an offence cognizable only under Section 21 of the MMDR Act, 1957 and not under any other law. There is no bar on the court from taking cognizance of the offence under Section 379 IPC. We would also observe that the violation of Section 4 being a cognizable offence, the police could have always investigated the same, there being no bar under the MMDR Act, 1957, unlike Section 13(3)(iv) of the TOHO Act.*
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> ***16.*** *In view of the aforesaid discussion, we would uphold the order of the High Court refusing to set aside the prosecution and cognizance of the offence taken by the learned Magistrate under Section 379 IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. We would, however, clarify*

> *that prosecution and cognizance under Section 21 read with Section 4 of the MMDR Act, 1957 will not be valid and justified in the absence of the authorisation. Further, our observations in deciding and answering the legal issue before us should not be treated as findings on the factual allegations made in the complaint. The trial court would independently apply its mind to the factual allegations and decide the charge in accordance with law. In light of the aforesaid observations, the appeal is partly allowed, as we have upheld the prosecution and cognizance of the offence under Section 379 IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. There would be no order as to costs."*

6. By way of placing the said judgment, learned senior counsel for the petitioner submits that unnecessarily the case under the MMDR Act as well as under the Indian Penal Code has been added. On these grounds, he submits that the entire criminal proceeding may kindly be quashed and the factory of the petitioner may kindly be directed to be unsealed.

7. On the other hand, Mr. Manoj Kumar, learned counsel for the respondent-State submits that only the FIR is under challenge in this petition and at this stage, all these aspects cannot be looked into by this Court as this case is filed under Article 226 of the Constitution of India. He further submits that once the charge-sheet is submitted, everything will be clear and no case of quashing of the FIR is made out. He also submits that in view of the allegations, the factory premises of the petitioner has been sealed.

8. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on record and finds that admittedly the FIR was registered on 15.04.2023 and on the same day, the factory premises of the petitioner was sealed. The annexures annexed with the writ petition, which has been explained by Mr. Mazumdar, learned senior counsel appearing for the petitioner, suggest that the petitioner-company was having registration with the Directorate of Industries, Government of

Jharkhand under the Factories Act. The license was also provided and the Consent to Operate with regard to Water Act and Air Act was also there. The GST registration certificate was also issued in favour of the petitioner. The agreement with CCL, as has been noted in the argument of Mr. Mazumdar, learned senior counsel appearing for the petitioner, is also there. Annexures-8 Series and 12 Series further suggest about the intimation of quantity of coal procured and processed. The Court finds that only FIR is under challenge and *prima facie* the case of the petitioner is covered in view of the judgment passed by the Hon'ble Supreme Court in ***State NCT of Delhi v. Sanjay; [(2014) 9 SCC 772]*** as well as ***Jayant and others v. State of Madhya Pradesh; [(2021) 2 SCC 670]*** and in view of the ratio laid down in these two judgments, so far as quashing of the FIR is concerned, this Court is disposing of the said prayer in view of paragraph 21.4 of the judgment passed in *Jayant (supra),* which is quoted hereinbelow:

> ***"21.4.*** *That in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the In-charge/SHO of the police station concerned to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and the Rules made thereunder and thereafter after investigation the In-charge of the police station/investigating officer concerned submits a report, the same can be sent to the Magistrate concerned as well as to the authorised officer concerned as mentioned in Section 22 of the MMDR Act and thereafter the authorised officer concerned may file the complaint before the learned Magistrate along with the report submitted by the investigating officer concerned and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and the Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate."*

9. Once final form is submitted, the authority concerned will proceed in

view of the direction made in paragraph 21.4 of the said judgment.

10. This Court finds that so far as sealing of the factory is concerned, the judgment relied by the learned senior counsel for the petitioner in *Nevada Properties Private Limited (supra)* has not been demolished by the learned counsel for the State as to why the factory in question is not directed to be unsealed. Learned counsel for the State only submits that in view of Rule 11 of the Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017, the competent person has lodged the FIR and only submission is made that e-transportation challan was not there.

11. In view of the discussions made hereinabove that valid documents with regard to factory license, Consent to Operate, the communication with regard to process coal and transportation contained in Annexures-8 Series and 12 Series as well as other documents which have been discussed hereinabove are on the record, which suggest that the said factory was being operated with a valid documentation authorized by the competent authority of the State of Jharkhand.

12. It is well settled that immovable property cannot come within the purview of Section 102 Cr.P.C., as has been held by the Hon'ble Supreme Court in *Nevada Properties Private Limited (supra)*. In paragraph 32 of the said judgment, it has been held that the police officer cannot be allowed to seize immovable properties on mere suspicion of the commission of any offence and it would mean and imply giving a drastic and extreme power to dispossess etc. to the police officer on a mere conjecture and surmise, that is, on suspicion, which has hitherto not been exercised. When Section 102 Cr.P.C. does not give power to seize immovable property, that power cannot be utilized by the police in absence of any order of the

competent court of law.

13. In view of the above facts, reasons and analysis and considering the judgment passed in *Nevada Properties Private Limited (supra)*, the prayer no.(b) with regard to unsealing of the factory of the petitioner is allowed. The seal of the said factory premises of the petitioner shall be opened by the concerned officer in presence of the petitioner, who happened to be the owner of M/s Super Coke Industries forthwith.

14. With the above observation and direction, this writ petition is disposed of.

(Sanjay Kumar Dwivedi, J.)

Ajay/ A.F.R