ABC 2019 (I) 312 GUJ
ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(A.S. Supehia, J.)

Criminal Misc. Application No. 12032 Of 2017

Decided on 3 December, 2018

REKHA BHARATBHAI LALJIBHAI LATHIYA ***- Appellant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered:- ***(A) Code of Criminal Procedure, 1973 — Section 482 — Quashing of FIR — Indian Penal Code, 1860 — Sections 379, 120(B) — Mines and Minerals (Development and Regulations) Act, 1957 Section 4 & 22 — Gujarat Mineral (Prevention of Illegal Mining Storage and Transportation) Rules, 2005— Rules 3, 5 & 13 — Prosecution based on police report — Submission by defence — the cognizance can be taken only upon a complaint by a person authorized, the police has no powers to investigate on the strength of FIR — Prosecution quashed. (Para 7)***

(B) Mines and Minerals (Development and Regulations) Act, 1957— Section 22 — Bar under — Investigation by police — Held, Concerned offence being a cognizable offence the section will not operate as a bar — The only bar is with regard to taking of cognizance by the court. (Para 6)

Held:- This Court in the aforesaid order dated 01.03.2017 by examining the Provisions of Rules 3, 5 and 13 of the Gujarat Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2005 visavice Section 22 of the Act, 1957 after threadbare analyzed of the aforesaid provisions of law and had thus,

> *A bare reading of the decision of the Supreme Court in the case of Jaysukh Bavanji Shingalia v. State of Gujarat & Anr. (supra) would go to show that the view taken by the learned Single Judge of this court referred to above has been confirmed. Thus, the position of law is now well settled that Section 22 of the Act, 1957 will not operate as a bar so far as the powers of the police to investigate such offence is concerned being a cognizable offence. The only bar is with regard to taking of cognizance by the court as provided under Section 22 of the Act, 1957. The matters with which I am dealing with are all at the stage of investigation by the police. The learned*

counsel appearing for the respective petitioners submit that the investigation should be stayed as the same could be termed as illegal in view of the provisions of Section 22 of the Act, 1957. I am afraid, I am unable to accept this contention considering the decision of the Supreme Court.

In view of the above, I am left with no other option but to quash the prosecution, which is based on a police report for the offence punishable under the Act 1957.

This application is allowed. The proceedings of the Criminal Case No.794 of 2016 pending before the learned JMFC, Mandvi, Surat, is hereby quashed. Rule made absolute. Direct service is permitted.

It shall be open for the concerned department to initiate appropriate proceedings in accordance with law before the appropriate forum. (Para-6)

Thus, as observed by this Court, the offence punishable under the Act 1957 are hereby quash and set aside and the prosecution, which is based on a police report for the offence punishable under the Act 1957 are quash as it is clarified that it is open for the concerned department to initiate appropriate proceedings before appropriate forum. So far as Section 379 is concerned, liberty is also reserved in favour of the respondent authority to investigate the same and file appropriate report. (Para-7)

Counsel:- ***For Appellant(s):*** *Mr. MP Shah, Ms. Kruti M Shah, Advs.*

For Respondent(s): *Mr Himanshu K Patel, Adv.*

JUDGMENT

A.S. SUPEHIA, J.: - 1. In the present application, the applicants have prayed for quashing the FIR bearing **IIC.R.No. 78/2017** registered with 'C' Division Police Station, District: Bharuch on 04.05.2017 for the offences punishable under Rules 5, 6 and 13 of the Gujarat Mineral (Prevention of Illegal Mining Storage and Transportation) Rules, 2005 ("Rules")

2. At the outset, Ms. Kruti Shah, learned advocate appearing for the applicants has submitted that the issue pertaining to this case is squarely covered by the judgment dated 15486 of 2017. She has submitted that as per Section 22 of the Mines and Minerals (Development and Regulations) Act, 1957 (Act,1957), since the

cognizance of the offence under Section 4 of the Act, 1957 can be taken by the Court only upon a complaint, in writing, made by a person authorized in that behalf by the Central Government or the State Government, the police has no powers to investigate the said offence on the strength of a first information report. It is observed that under Section 22 of the Act, 1957 will not operate as a bar so as the powers of the police to investigate such offence is concerned being a cognizable offence provided under Section 22 of the Act, 1957.

3. Learned Additional Public Prosecutor appearing for the respondent authority has submitted that as per the investigation of the Investigating Officer, it reveals that the offences under Section 379, 120(B) of the Indian Penal Code is made out against the present applicants. Since the supervising officer has given the complaint to the police investigating officer on 04.05.2017 in this regard. He has also submitted that as regards the offence under IPC is concerned, the same may not be quashed and liberty may be reserved for the investigating officer to proceed further in that behalf.

4. Heard the learned advocates for the respective parties.

5. It is not in dispute that the offence under Rules 3, 5 and 13 of the Rules has been filed against the present applicant by the supervisor officer on 04.05.2017.

6. This Court in the aforesaid order dated 01.03.2017 by examining the Provisions of Rules 3, 5 and 13 of the Gujarat Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2005 visavice Section 22 of the Act, 1957 after threadbare analyzed of the aforesaid provisions of law and had thus,

> *A bare reading of the decision of the Supreme Court in the case of Jaysukh Bavanji Shingalia v. State of Gujarat & Anr. (supra) would go to show that the view taken by the learned Single Judge of this court referred to above has been confirmed. Thus, the position of law is now well settled that Section 22 of the Act, 1957 will not operate as a bar so far as the powers of the police to investigate such offence is concerned being a cognizable offence. The only bar is with regard to taking of cognizance by the court as provided under Section 22 of the Act, 1957. The matters with which I am dealing with are all at the stage of investigation by the police. The learned counsel appearing for the respective petitioners submit that the investigation should be stayed as the same could be termed as illegal in view of the provisions of Section 22 of the Act, 1957. I am afraid, I*

am unable to accept this contention considering the decision of the Supreme Court.

In view of the above, I am left with no other option but to quash the prosecution, which is based on a police report for the offence punishable under the Act 1957.

This application is allowed. The proceedings of the Criminal Case No.794 of 2016 pending before the learned JMFC, Mandvi, Surat, is hereby quashed. Rule made absolute. Direct service is permitted.

It shall be open for the concerned department to initiate appropriate proceedings in accordance with law before the appropriate forum.

7. Thus, as observed by this Court, the offence punishable under the Act 1957 are hereby quash and set aside and the prosecution, which is based on a police report for the offence punishable under the Act 1957 are quash as it is clarified that it is open for the concerned department to initiate appropriate proceedings before appropriate forum. So far as Section 379 is concerned, liberty is also reserved in favour of the respondent authority to investigate the same and file appropriate report.

8. In view of the above, the present application is allowed. Rule made absolute to the aforesaid extent. Direct service is permitted.

Result:- Application allowed.

ABC 2019 (I) 315 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT
(R.P.Dholaria, J.)
Criminal Appeal No. 2367 of 2006
Decided on 29 November, 2018

STATE OF GUJARAT ***- Appellant(s).***

Versus

IBRAHIM @ DHAFO ISMAIL TARKVADIYA ***- Respondent(s).***

Law Covered:- ***(A) Code of Criminal Procedure, 1973 — Section 378 — Appeal against Acquittal — Narcotic Drugs And***