

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 373/2022
[@ SLP [CRL.] NO. 3825/2020]

THE STATE OF KARNATAKA

Appellant(s)

VERSUS

P. KUMARASWAMY

Respondent(s)

O R D E R

Leave granted.

The Range Forest Officer, Forest Mobile Squad Ballari had registered a charge sheet against the accused-respondent for offences punishable under Section 24 (f)(g)(gg) of the Karnataka Forest Act, 1963. The factual scenario which gave rise to charge sheet was the claim of the Range Forest Officer that on 16.12.2006 they had received credible information that at Nandihalli Village in Kumaraswamy Reserve Forest area some persons were indulging in illegal mining and had stocked iron ore and powder in the forest area. We may only note that originating from the so called "some iron ore", 25,000 ton of iron ore were found from different parts of the forest!.

The trial took place and the witnesses were examined. It was found by the trial Court that the prosecution had failed to prove the guilt of the accused under the relevant provisions and acquitted the accused in terms of the judgment dated 04.03.2016. On pronouncement of the judgment

simultaneously the bail bonds and surety bonds of the accused stood cancelled and insofar as the subject matter iron ore was concerned, it was directed to be confiscated to the State after the appeal period was over. The respondent preferred a revision petition before the Additional Sessions Judge, Ballari against the order of conviction and in terms of judgment dated 16.01.2017, a finding was reached that the property does not belong to forest department as the land was found to be patta land owned by the respondent who was accused No. 2. No one else had claimed the property being the iron ore property. Thus the Revision petition was allowed and the appellant was directed to return the iron ore to the respondent.

The State filed a criminal revision petition aggrieved by that order which has been decided in terms of the impugned judgment dated 11.07.2019.

The High Court dismissed the petition predicated on a reasoning that where an order has to be made for return of property under Section 452 of the Cr.P.C. after the accused is discharged or acquitted, the stock iron ore and powder not having been found in the forest area, the same belonged to the accused and it had to be returned accordingly. We have entertained the SLP and vide interim order stayed the operation of the impugned order in terms of our order dated 18.08.2020.

We have heard learned counsel for parties.

Learned counsel for the appellant seeks to emphasize that a conjoint reading of Sections 452 and 458 of the Cr.P.C. would show the manner in which an order has to be passed for disposal of property at the conclusion of trial.[See : Bharat Sanchar Nigam Ltd. vs. Suryanarayanan & Anr.]¹ It is his say that merely because Forest Department had failed to prove the case beyond reasonable doubt qua the mineral seized predicated on their inability to establish that the area was forest land and had been held to be patta land, would still require an enquiry to be made by the Magistrate in terms of Section 458, Cr.P.C.

On the other hand, learned counsel for the respondent seeks to submit by reference to the counter affidavit that the scheduled land was uneven and was unsuitable for cultivation. In the process of leveling the land for agricultural operations, iron ore mineral was found in the scheduled property and was kept on the scheduled property with a view to take permits from the Department of Mines and Geology and transport the same in accordance with law as the decision of the State Government was to grant permits as one time measure if the Department of Mines and Geology finds that the iron ore mineral was removed while leveling of land. It is the say of the respondent that apart from the various other persons have also found iron ore mineral of smaller quantities

during the course of such leveling of land and the State Government had issued mineral dispatch permit to them for transportation as a one time measure. The circular in this behalf issued by the Government of Karnataka has been referred to is dated 24.02.1999.

The respondent has contended that as the pattadar of the land, the respondent had made the application to the State government placing on record that at the time of conducting leveling of agricultural land, iron ore mineral and powder was found and seeking permission to lift the iron ore. It is categorically stated in the counter affidavit that no regular mining activity was carried out by the respondent in the scheduled property but the iron ore was only a product of the activity of leveling of land. Thus no illegal mining was carried out for which licence may be required as sought to be contended by the appellant.

We have given our thought to the matter and it is our view that the iron ore cannot be said to be the property of the forest department nor can they lay a claim on the same in view of the factual matrix of the case. The question however remains as to what has to be done with the iron ore mineral and powder on the basis of stand of the respondent that this was the result of the leveling of the land. Naturally an enquiry would have to be made whether it was so. However, that would be a part of the task of the Mines and Minerals Department and not of the Forest Department.

Learned counsel for the respondent has no quibble with the proposition that this iron ore is liable to be preserved and to be dealt with as per the decision of the Mines and Minerals Department or a task force stated to be constituted for the said purpose.

The aforesaid being the position, we direct that the custody of the mineral which is now lying for over 15 years with the Forest Department be handed over to the Mines and Minerals Department to be dealt with in accordance with the norms on the application filed or to be filed by the respondent. The Mines and minerals Department is not before us while the State of Karnataka is represented and suffice to say that on such an application being filed, it would be dealt with as per the relevant provisions of law within a maximum period of three months from the date of any application to be filed or if a pending application has to be considered then the same has to be done within three months from the date of receipt of this order.

The appeal is allowed in the aforesaid terms, leaving the parties to bear their own costs.

..... J.
[SANJAY KISHAN KAUL]

..... J.
[M.M. SUNDRESH]

NEW DELHI;
MARCH 07, 2022

