

State of Jharkhand Vs. Dr. Nishkant Dubey & Ors.

Criminal Appeal No. 5475 of 2024 arising out of SLP (Crl.) No. 7844/2023 · Supreme Court of India · 2025-01-21 · Abhay S. Oka · Manmohan · F2J-C-1473

Full judgment text

State of Jharkhand Vs. Dr. Nishkant Dubey & Ors.

[Criminal Appeal No. 5475 of 2024 arising out of SLP (Crl.) No. 7844/2023]

[Criminal Appeal No. 5476 of 2024 arising out of SLP (Crl.) No. 7816/2023]

[Criminal Appeal No. 5477 of 2024 arising out of SLP (Crl.) No. 7706/2023]

Manmohan, J

1. Present appeals have been filed challenging the judgment and order dated 13th March, 2023 passed by the High Court of Jharkhand at Ranchi allowing the writ petitions filed by the Respondents herein and quashing the First Information Report ('FIR') being Deoghar Kunda P.S. Case No.169 of 2022 registered against the Respondents-accused persons for commission of alleged offences under Sections 336, 447 and 448 of Indian Penal Code, 1860 ('IPC') and Sections 10 and 11A of the Aircraft Act, 1934 holding that the FIR is vitiated by mala fides and allowing the proceedings to continue would amount to abuse of law. The High Court of Jharkhand at Ranchi while quashing the FIR has held as under:-

"26. In view of the above facts, reasons and analysis and considering that Aircraft took off after permission of the ATC, Aircraft Act, 1934 is itself complete code and there are procedure prescribed therein to lodge the complaint and of the enquiry, in view of the Act, the competent authority has not complained anything, even Airport Director has been made accused and even the two sons of the petitioner no. 1 has not been spared and considering that when the Special Act is there, Sections of Indian Penal Code are not attracted, petitioner no.1 and 4 in W.P.(Cr.) No. 448 of 2022 are Member of Parliament and petitioner no.1 is Chairman of the Airport Advisory Committee of Deoghar Airport and petitioner no.4 is also a member of the Standing Committee, Civil Aviation, further considering the materials on record which suggests that several cases have been lodged against the petitioner no.1 in W.P.(Cr.) No. 448 of 2022 which have been quashed by this Court and some judgments are affirmed by the Hon'ble Supreme Court, it transpires that F.I.R. has been lodged malafidely and allowing to continue the proceeding will amount the abuse of process of law, accordingly, the F.I.R. bearing Deoghar Kunda P.S. Case No. 169 of 2022 including the entire criminal proceeding registered under sections 336, 447 and 448 of the Indian Penal Code and section 10 and 11A of the Airport Act, 1934, pending in the Court of learned Sub Divisional Magistrate, Dumka, is hereby quashed."

FACTS

2. The facts, as mentioned in the FIR, are that on 31st August, 2022 at 17:25 hours, the Respondents-accused persons boarded a chartered plane to travel from Deoghar Airport. After some time, the door of the plane opened and the pilot came down and moved towards the Air Traffic Control ('ATC') room as the Air Traffic Controller had denied permission for take-off. Learned counsel for Appellant- State of Jharkhand stated that the first informant who was Security-in-charge in Deoghar Airport followed the pilot and when he entered the ATC room, he saw that the pilot was creating pressure for giving Respondents-accused persons clearance for take-off at the earliest.

Thereafter, the other Respondents-accused persons also barged into the ATC room and created pressure for the clearance to be given to them. According to the learned counsel for the Appellant-State of Jharkhand, pursuant to the pressure exerted by the Respondents-accused persons, the ATC clearance was given and the chartered flight took-off at 18:17 hours even when the sunset time on that day was 18:03 hours.

ARGUMENTS ON BEHALF OF APPELLANT-STATE OF JHARKHAND

3. Learned counsel for the Appellant-State of Jharkhand stated that the ATC room is a restricted area and the Respondents-accused persons forcefully trespassed and entered the ATC room which was a

serious security breach and the Respondents-accused persons threatened the ATC officers and coerced them to give permission for take-off.

He stated that the ATC had denied clearance/permission to chartered flight to take-off from Deoghar Airport due to low visibility and bad weather conditions. He pointed out that the Deoghar Airport does not have the facility of night operation. He stated that by forcefully obtaining the ATC clearance by threatening and creating pressure on the ATC officers, the chartered flight with the Respondents-accused persons on board, took-off at 18:17 hours i.e., after sunset.

4. He submitted that there was a clear violation of Rule 14(ix) of Airport (Security) Rules, 2011 which empowers the Security Officer to supervise the movement of persons in the restricted areas. He contended that the said Rules of 2011 have been promulgated in exercise of powers under Section 4 read with Section 5 of the Aircraft Act, 1934. Section 5(2)(gc) of the Aircraft Act, 1934 permits the Central Government to make rules to provide for "the measures to safeguard civil aviation against acts of unlawful interference".

5. He submitted that the High Court of Jharkhand failed to appreciate that the bar under Section 12B of the Aircraft Act, 1934 will get triggered and come into play only after the investigation is complete and the result of investigation in the form of the Final Report/Chargesheet is filed before the competent Court. According to him, Section 12B does not bar the police from registering an FIR and consequently conducting investigation arising out of the FIR.

6. He pointed out that in the context of prosecution under the Environment Protection Act, 1986 which, by virtue of Section 19, mandates that no Court shall take cognizance of an offence under this Act except on complaint made by the officers specified therein, the Division Bench of the Bombay High Court in Navi Mumbai Environment Preservation Society and Anr. vs. Ministry of Environment (PIL No.218/2013) dated 22nd December, 2016 has after considering the judgment of this Court in State (NCT) of Delhi vs. Sanjay, (2014) 9 SCC 772 held that the offence under Section 15(1) of the Environment Protection Act, 1986 is a cognizable offence and therefore, the police can register the FIR under Section 154(1) of the Code of Criminal Procedure, 1973 (for short 'Code').

The Division Bench of the Bombay High Court (speaking through one of us Hon'ble Mr. Justice A.S. Oka as his Lordship then was) held, "Therefore, if FIR is registered by the Police for the offence punishable under Section 15 of the Act of 1956, the registration of offence and investigation carried out by the police is not per se vitiated. A complaint can be made/filed by authorized officer under Clause (a) of Section 19 before the concerned Court. While filing a complaint, the authorized officer can always rely upon the material collected by the police during the investigation. The Complaint can include the material collected by the police during the investigation carried out on the basis of the FIR." He pointed out that the High Court of Bombay in the said case, inter alia, issued the following interim direction at para 15(iii):-

"(III) We clarify that registration of offences by the Police under Sub-Section (1) of Section 15 of the said Act of 1986 and the investigation carried out thereon is not per se illegal. The officers authorized under clause (a) of Section 19 can always file complaints in accordance with the said Code by relying upon the material collected during the investigation and material forming part of the charge sheet prepared by the Police."

7. He further submitted that the finding of the High Court of Jharkhand in the impugned judgment that the Aircraft Act, 1934 is a Special Act and a complete Code in itself and therefore, IPC offences are not attracted, is erroneous and is in the teeth of the law laid down by this Court in State (NCT of Delhi) Vs. Sanjay (supra) and in Jayant & Ors. Vs. State of Madhya Pradesh, (2021) 2 SCC 670. The relevant portion of the judgment relied upon in State (NCT of Delhi) Vs. Sanjay (supra) is reproduced herein below:-

"69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the riverbed.

72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which is the property of the State, out of the State's possession without

the consent, constitute an offence of theft.

Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the riverbeds without consent, which is the property of the State, is a distinct offence under IPC.

Hence, for the commission of offence under Section 378 IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act. Consequently, the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled. Consequently, these criminal appeals are disposed of with a direction to the Magistrates concerned to proceed accordingly."

8. He also submitted that in the impugned judgment, the High Court of Jharkhand erroneously adjudicated upon disputed questions of facts even when the investigation was at a nascent stage. 9. He lastly submitted that the High Court of Jharkhand had conducted a mini trial while deciding the writ petition under Article 226 of the Constitution of India.

ARGUMENTS ON BEHALF OF THE RESPONDENTS-ACCUSED

10. Per contra, learned senior counsel for the Respondents-accused persons stated that the Respondent No.1 is a sitting and three-time Member of Parliament and Chairman of the Airport Advisory Committee, Deoghar Airport. He stated that Respondent No.1 was accompanied amongst others by Respondent No.4 (also a sitting Member of Parliament and a Member of Standing Committee, Civil Aviation) when his flight landed from New Delhi at Deoghar Airport. He stated that in his capacity as Chairman of the Airport Advisory Committee, Respondent No.1 disembarked from the aircraft, met the Director of the Deoghar Airport and reviewed the functioning of the airport and operational issues like night landing.

11. He contended that this routine meeting has been falsely represented by the Appellant-State of Jharkhand as a forcible trespass of the ATC room at the Deoghar Airport. He further contended that the FIR was premised on completely incorrect facts, was illegal and mala fide for the following reasons:

S.NO. REASON PARTICULARS

1. Alleged offence governed by the provisions of Section 12B of the Aircraft Act. Procedure under Section 12B of the Aircraft Act, 1934 - Precondition of complaint to be made by/with sanction of the relevant Aviation Authorities has been completely bypassed.

2. FIR premised on an incorrect legal basis. The basis of the FIR was that the Aircraft could be operated only till 17:30 hrs. This position is legally flawed and completely incorrect.

Rule 4 of the Aircraft Rules, 1937 clearly defines flight by night as, inter alia, a flight performed between the period of half an hour after sunset.

As per FIR, on the day of alleged incident, i.e., 31st August, 2022, the sunset was at 18:03 hours. As per the Petitioner's own affidavit before the High Court (para 6 at page 128 of SLP), the flight took off at 18:17 hours after the clearance from Kolkata ATC.

Therefore, the flight take-off, being within the period of half an hour after sunset, was legal and proper.

3. Allegation in FIR of forcible entry into the ATC Room, Deoghar Airport and pressure exerted to obtain ATC clearance. The clearance for take-off was given by the ATC, Kolkata. The ATC at Deoghar

Airport neither had the authority nor the control to grant take-off clearance. There is no allegation that the answering Respondent tried to influence take-off clearance from the ATC-Kolkata.

12. Learned senior counsel for the Respondents-accused persons submitted that the provisions of the Aircraft Act, 1934 being special law shall prevail over the Code being the general law. He pointed out that Entry 29 of the List I of the Seventh Schedule of the Constitution of India states as follows:-

"29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organization of air traffic and aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies."

13. He pointed out that Section 4A of the Aircraft Act, 1934 prescribes for the constitution of a body to be known as the "Directorate General of Civil Aviation". Under sub-Section (2) thereof, it is provided that:

"(2) The Directorate General of Civil Aviation shall be responsible for carrying out the safety oversight of regulatory functions in respect of matters specified in this Act or the rules made thereunder."

14. Similarly, under Section 4B of the Aircraft Act, 1934 a "Bureau of Civil Aviation Security" has been constituted. Under sub-section (2) thereof, it is stated that:

"(2) The Bureau of Civil Aviation Security shall be responsible for carrying out the regulatory and oversight functions in respect of matter relating to civil aviation security specified in this Act or the rules made thereunder."

15. He stated that under Section 4C of the Aircraft Act, 1934, a provision has been made for constituting a body named as "Aircraft Accidents Investigation Bureau". Under sub-Section (2) thereof, it is provided that:

"(2) The Aircraft Accidents Investigation Bureau shall be responsible for carrying out the functions in respect of matters relating to investigation of aircraft accidents or incidents specified in this Act or the rules made thereunder."

16. Further, under Section 5 of the Aircraft Act, 1934, the Central Government may make rules for regulating the manufacture, possession, use, operation, sale, import or export of any aircraft or class of aircraft and for securing the safety of aircraft operations. Among several subjects, the Central Government can frame rules in relation to:

- i. the measures to safeguard civil aviation against acts of unlawful interference, under sub-clause (gc) of Section 5;
- ii. safety oversight and regulatory functions, under sub-clause (qb); and
- iii. regulatory and oversight functions in respect of matters relating to civil aviation security, under sub-clause (qc).

17. According to learned senior counsel for the Respondents-accused persons, a necessary concomitant which flows from the combined reading of the above is that the safety and security of the civil aviation is completely governed under the Aircraft Act, 1934 and the Rules framed thereunder. At this stage, he referred to Rule 90 of the Aircraft Rules, 1937, which reads as under:-

"90. Entry into public aerodromes.-

(1) No person shall enter or be in the terminal building of any Government aerodrome or public aerodrome or part of such building or any other area in such aerodrome notified in this behalf by the Central Government unless he holds an admission ticket issued by the aerodrome operator or an entry pass issued by the Commissioner of Security (Civil Aviation) or any person authorized by the Central Government in this behalf."

18. Therefore, according to him, the access to an aerodrome and any activities thereafter are completely governed by the Act and/or the Rules framed thereunder.

19. He pointed out that similarly, Parts II, III, IV and V of the Aircraft (Security) Rules, 2011 prescribe the security measures at aerodromes, the access control, security checks and the other security measures by aircraft operators. Rule 18 under the above stated Part III regulates the entry into aerodrome. Further, under the said Aircraft (Security) Rules, 2011, Rule 2(y) defines "security incident" which includes the contravention of breach of security laws etc.

20. Further, Rules 45 and 46 of the Aircraft (Security) Rules, 2011 prescribe that any accident / incident has to be reported to the Commissioner, who shall order an inquiry to be conducted by a competent officer. Rules 45 and 46 are reproduced herein below:-

"45. Reporting of security accident or incident.-

Every aircraft operator, aviation security group, aerodrome operator, regulated agent and owner or operator of catering establishment shall report the security accident or security incident to the Commissioner immediately on the occurrence of the security accident or security incident.

46. Investigation of security accident or incident.-

(1) The Commissioner may order investigation of any security accident or security incident and appoint an officer not below the rank of Assistant Commissioner of security as Inquiry Officer.

(2) The Inquiry Officer shall, after affording an opportunity of being heard to the defaulting person, make a report to the Commissioner who should forward the same to the Central Government."

21. Thus, according to him, even the power of inquiry and investigation at aerodromes is only vested with authorities as prescribed under the aforesaid Rules.

22. Since learned senior counsel for the Respondents-accused persons repeatedly emphasised Section 12B of the Aircraft Act, 1934, the same is reproduced hereinbelow:

"12B. Cognizance of offences - (1) No court shall take cognizance of any offence punishable under this Act, save on a complaint made by or with the previous sanction in writing by the Director General of Civil Aviation or Director General of Bureau of Civil Aviation Security or Director General of Aircraft Accidents Investigation Bureau, as the case may be."

23. According to him, admittedly, the procedure under the Special Act, i.e. the Aircraft Act, 1934 was not followed in the present case. He submitted that it is a settled principle of law that the provisions of the special law will prevail over the provisions of the general law, i.e. the Code. Consequently, according to learned senior counsel for the Respondents-accused persons, the very power of the State Police to investigate / inquire has been curtailed by the aforementioned special procedure.

24. He emphasised that the essence of the entire FIR dated 02nd September, 2022 was that the Respondent No.1 had forcibly entered the ATC at the Deoghar Airport and pressurized the personnel therein to grant permission for take-off of their aircraft. He stated that nothing could be further from the truth as in the present case, admittedly, the clearance for take-off was given by the ATC, Kolkata Region due to infrastructural reasons. The take-off was completely within the permissible limits as regulated by Rule 4 of Schedule II of the Aircraft Rules, 1937 which states as under:-

"4. Flight by Night- Flight by night for the purpose of this Schedule, except where otherwise stated, means, a flight performed between the period of half an hour after sunset and half an hour before sunrise."

25. He pointed out that the Appellant's own Affidavit dated 12th November, 2022 filed by the investigating agency, viz., the Crime Investigation Department, P.S. Dumka, Jharkhand before the High Court admits as under:-

"6. These witnesses have stated that clearance to any flight for take off from Deoghar Airport is granted by them after getting clearance from Kolkata region. After getting clearance from Kolkata Region, the chartered flights was given ATC clearance at about 18:15 hrs and the flight took off at about 18:17 hrs."

26. He stated that it is inconceivable as to why the Respondents-accused persons would attempt to exert undue influence over the ATC officials at Deoghar Airport when the ultimate power to grant ATC clearance was in the hands of the ATC Kolkata authorities.

27. He repeatedly emphasised that none of the allegations in the FIR made out the offences alleged under IPC. He stated that as the ATC clearance was granted by the ATC Kolkata Region which is more than 300 Kms. from the Deogarh Airport, the Respondent No.1 cannot be said to have committed any act endangering the life or safety of anyone at the Deogarh Airport under Section 336 IPC.

28. He further stated that the allegation that Respondent No.1 pressurized the officials of ATC Deoghar is proven false by the Appellant-State's own Affidavit, inasmuch as, the actual clearance was given by

ATC Kolkata. Thus, there is no question of the Respondent No.1 intimidating the ATC Deogarh officials under Section 447 IPC.

29. He lastly contended that the FIR is one of the many instances, where the Appellant-State of Jharkhand has filed false FIRs against the Respondent No.1 and his family. Among others, on three such occasions, those FIRs have been quashed by the High Court and the said orders have been upheld by this Court.

COURT'S REASONING

UNDER ARTICLE 226 AND/OR SECTION 482 CODE, HIGH COURT CAN QUASH AN FIR

30. It is settled law that in exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code, it is open to the High Court to quash an FIR either to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Though it is not possible to lay down any precise or rigidly defined formula, yet in *State of Haryana & Ors. vs. Bhajan Lal & Ors.*, 1992 Suppl.(1) SCC 335, this Court has held that an FIR can be quashed if the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused or where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings.

SECTIONS 336, 447 AND 448 IPC ARE NOT MADE OUT IN THE PRESENT CASE

31. Consequently, it is important to examine the allegations in the impugned FIR. Accordingly, the FIR in question is reproduced in its entirety hereinbelow:-

No.JH 713487

FIRST INFORMATION REPORT

(Under Section 154 Cr.P.C.)

1. District: Deogarh, P.S.: Kunda, Year 2022, FIR No.: 0169

Date and Time of FIR: 02/09/2022 00:00 hrs

2. S. No. Acts Sections

(1) IPC 336

(2) IPC 447

(3) IPC 448

(4) Aircrafts Act, 1934 10

(5) Aircrafts Act, 1934 11A

3. (a) Occurrence of Offence:

Day: Wednesday, Date from: 31.08.2022 Date to:

31.08.2022 Time Period: 6 pahar, Time from:

17.25 hrs Time to: 18:00 hrs

(b) Information received at P.S.:

Date: 02.09.2022 Time 00.05 hrs.

(c) General Diary Reference: Entry No.: 014 Date & Time: 02.09.2022

4. Type of Information (Written/Oral): Written

1 (a) Direction and distance from P.S.: South-East 8, BeatNo.:

(b) Address: Deogarh Airport, P.S. Kunda

(c) In case, Outside the limit of the Police Station Name of P.S. District:

6 Complainant/ Informant:

(a) Name: Suman Anan

(b) Father's/Husband's Name: Late Rajeshwar Sharma

(c) Date of Birth: 1963

(d) Nationality: Indian

(e) UID No.

(f) Passport

No. Date of Issue: Place of Issue:

(g) Id details (ration Card, Voter ID Card, Passport, UID No., Driving License, PAN)

S.No. ID Type ID Number

(h) Address:

1. Present Address: Deoghar Airport, Kunda, Deoghar, Jharkhand, India

2. Permanent Address: Deonagar, Shastrinagar, Girideah Nagar, Girideah, Jharkhand, India.

7. Details of the known/suspected/unknown accused with full particulars:

S.N. Name Alias Relative's Name Present Address

1 Chartered Plane Pilot

1, Unknown Kunda, Deoghar, Jharkhand, India

2 Shree Nishikant Dubey

1, MP Godda Lokshabha Godda Magar, Jharkhand, India

3 Shree Kanishk Kant Dubey

1, Unknown, Kunda, Deoghar, Jharkhand, India

4 Shree Mahikant Dubey

1, Unknown, Kunda, Deoghar, Jharkhand, India

5 Shree Manoj Tiwari

1, MP North-East, Delhi Lokshabha, New Delhi

6 Shree Mukesh Pathak

1, Unknown, Kunda, Deoghar, Jharkhand, India

7 Shree Deota Pandey

1, Unknown, Kunda, Deoghar, Jharkhand, India

8 Shree Pintu Tiwari

1, Unknown, Kunda, Deoghar, Jharkhand, India

9 Shree Sandip Dhingra

1, Airport Director, Kunda, Deoghar, Jharkhand, India

8. Reason of delay in giving the complaint/information.....

9. Details of properties of interest:

S. No. Properties Category Property Type Description Value (In Rs.)

10. Total value of property (In Rs.)

11. Inquest Report/U.D. Case No., if any:

S.NO. UIDB Number:

12. First Information contents:

To, P.S. In charge, Kunda P.S. District Deoghar,

Sub: On 31.08.2022 in the Deoghar Airport Shri Nishikant Dubey, Hon'ble Member of Parliament Godda and his two sons, Shri Manoj Tewari, Hon'ble Member of Parliament and others without any permission have entered into the ATC and created pressure by using their influence upon the ATC personnel for obtaining forceful ATC Clearance. Sir, I, Suman Anan, Aged about 59 years, son of Late Rajeshwar Sharma, Resident of Deo Nagar Shastri Nagar, P.S. Nagar, District Girideah (Jharkhand), Deputy Superintendent of Police, presently posted on the post of Security-In-Charge of the entire Deoghar Airport. Since the day of my posting I am fulfilling my duties with devotion as per rules.

With respect to the above subject this is to inform you that on 31.08.2022 at 13.05 hrs. a chartered plane from Delhi reached Deoghar Airport. In that chartered plane following persons were found: (1) Shri Nishikant Dubey, Hon'ble Member of Parliament Godda, (2) Shri Kanishkant Dubey, (3) Shri Mahikant Dubey, (4) Shri Manoj Tiwari, Hon'ble Member of Parliament. (5) Shri Kapil Mishra, Hon'ble Member of Parliament, (6) Shri Sheshavri Dubey, (7) Sh. Sunil Tiwari and others. To receive them, huge numbers of people were there. After receiving them passengers and others came out.

In the evening at 17.25 hrs the passengers of Chartered Plane and persons came to see-off them at Deoghar Airport. All passengers went inside the chartered plane and the door of the plane was closed. After some time the door of the plane opened, the pilot came down. After coming down Pilot started moving towards ATC. Upon seeing him moving towards ATC, I became alert from the point of view of security and started walking behind the pilot. In this regard I would like to mention that at Deoghar Airport still the Night Take-off/ Landing and IFR facility are not available. Because of non availability of this facility due to Low Visibility/ Bad Weather Condition/ After Sunset, generally it was not possible to give ATC Clearance to Aircraft.

On 31.08.2022 the sunset time at Deoghar was 18.03 hrs and as per my knowledge on that day generally the Aircraft could be operated till 17.30 hrs only. When I reached the ATC Control Room, there in the Control Room Shri Sandeep Dhingra, Director of Airport and Pilot of Chartered Plane were already present. At that time the pilot of said Chartered Plane was creating pressure upon the ATC personnel present at that time and was saying that the passengers of Chartered Plane necessarily wanted to return back today itself therefore ATC clearance be given to them. During this discussion ATC personnel were talking on the mobile phone regarding clearance.

After some time Shri Nishikant Dubey, Hon'ble Member of Parliament Godda Parliamentary Constituency, his both sons Shri Kanishk Kant Dubey, Shri Mahikant Dubey and Shri Manoj Tiwari, Hon'ble Member of Parliament came inside the ATC room. I was surprised and shocked to see the passengers in the ATC Room and I was feeling uncomfortable. Pilot and passengers were creating pressure that the clearance be given to them at the earliest. Thereafter they get the ATC Clearance. Pilot and passengers departed from the ATC room. I was observing the Airport security from the ATC Room. After some time the pilot and passengers again entered into the chartered plane and thereafter chartered plane take-off.

Therefore keeping in view all the above facts it is clear that the above mentioned persons have violated the security measures of operating the airport and entered into the ATC Room, despite not having availability of, Night Operation Facility these persons ignoring the security of life and property of the passengers have created pressure for ATC Clearance. In this regard it is necessary to mention that through different modes the public was mentioning this incident. Today on 01.09.2022 at about 11.30 hrs, for perusing the entire incident I went into the Control Room. Upon perusal of C.C.T.V. of the incident I found that on 31.08.2022 Shri Mukesh Pathak, Shri Devta Pandey, Shri Pintu Tiwari have entered into the ATC building by violating the security measures.

Therefore, keeping in view the above facts, the above mentioned persons have violated the security measures, which includes: (1) Pilot of Chartered Plane, (2) Shri Nishikant Dubey, Hon'ble Member of Parliament Godda Constituency, (3) Shri Kanishkant Dubey, (4) Shri Mahikant Dubey, (5) Shri Manoj Tiwari, Hon'ble Member of Parliament, (6) Shri Mukesh Pathak, (7) Shri Devta Pandey, (8) Shri Pintu Tiwari and (9) Airport Director Shri Sandeep Dhingra who has committed negligence in fulfilling his duty and indirectly supported the passengers to enter and remain present in the ATC Room.

Therefore, kindly register a First Information Report against all the above persons in the relevant sections and Acts and proceed further in the matter. Faithfully Sd/- 01.09.22 Suman Annan, Deputy Superintendent of Police, Deoghar Airport, Deoghar Copy to: (1) Deputy Commissioner, Deoghar, (2)

Deputy Superintendent of Police, Deoghar, (3) Sub Divisional Police Officer, Sadar, Deoghar

13. Action taken: Since the above information reveals commission of offence(s) u/s as mentioned at Item No.2. (1) Registered the case and took up the investigation:

(2) Directed (Name of I.O.): Animanand Roshan Toppo Rank: SI (Sub Inspector) No. 1101324 to take up the investigation or

(3) Refused Investigation due to Or

(4) Transferred to P.S. District on point of jurisdiction.

F.I.R. Read over to the complainant/ informant admitted to be correctly recorded and a copy given to the complainant/ informant free of cost.

14. Signature/thumb impression of complainant/ informant

15. Date and time when dispatched to the court

Sd/-02.09.2022

Signature of Officer In-charge

Police Station:

Name: Praveen Kumar

Rank: SI (Sub Inspector) No.

32. Upon a reading of the aforesaid FIR, this Court is of the view that offences under Sections 336, 447 and 448 IPC are not made out in the present case.

33. Section 336 IPC seeks to punish a person who does an act rashly or negligently and endangers human life or personal safety of others. To attract Section 336 IPC, the prosecution must allege that the accused did the act in question; that it was done rashly or negligently and that it was such as to endanger the life or personal safety of others.

34. In the present case, the Respondents-accused persons were only asking the ATC to grant permission for take-off. This Court is of the view that the action of the pilot and the passengers talking to ATC officials in the present case cannot be construed as creating undue or illegal pressure on ATC officials. Moreover, as the aircraft carrying the Respondents-accused persons had taken off after obtaining ATC permission, it cannot be said that the Respondents-accused persons acted rashly or negligently so as to endanger human lives. Consequently, Section 336 IPC is not attracted to the present case.

35. Further, it is settled law that every trespass by itself is not criminal. To constitute criminal trespass the prosecution has to allege that the trespass was committed with one of the intents enumerated in Section 441 IPC. Accordingly, the prosecution has to prove that the complainant had possession of the property in question and that the accused entered into or upon the property; or after having lawfully entered unlawfully remained there with the intention (a) to commit an offence; or (b) to intimidate, insult, or annoy the person in possession. In the absence of any such allegation, the offence under Section 441/447 IPC cannot be sustained.

36. In the present case, no allegation of forcible entry or intimidation or insult or annoyance has been made by any official of ATC. On the contrary, the Director of Deogarh Airport has been arrayed as an accused in the FIR! Consequently, Section 447 IPC is not attracted to the present case.

37. Also, as the ATC office is not a place used as a human dwelling or a place of worship or a place for the custody of goods, the ingredients of Section 448 IPC are not attracted to the present case.

38. Consequently, taking Sections 336, 447 and 448 IPC as distinct offences, no case is made out against the respondents-accused persons.

SINCE THE AIRCRAFT ACT, 1934 AND THE RULES FRAMED THEREUNDER CONSTITUTE A COMPLETE CODE AND ITS SECTION 12B IS IN THE NATURE OF A PRE-CONDITION FOR TAKING COGNIZANCE BY A COURT, THE LOCAL POLICE CAN ONLY FORWARD THE MATERIAL COLLECTED BY IT TO SUCH AUTHORISED OFFICER.

39. This Court is further of the view that the Aircraft Act, 1934 as well as the Rules framed thereunder [including Rule 14(ix) of Airport (Security) Rules, 2011] is a complete Code which deals with safety and security of civil aviation and aerodrome. The Aircraft Act, 1934 also prescribes a special procedure for taking cognizance of any offence punishable under the Aircraft Act, 1934 i.e, the complaint must be made by or with the prior sanction of the Aviation authorities. Section 12B is in the nature of a pre-condition for taking cognizance by a Court.

40. Section 5 of the Code stipulates that "if any special law or local law for the time being in force contemplates any special jurisdiction or power or any special form of procedure prescribed, unless there is something to the contrary, to be found, it is the provisions of the special law or the local law which would prevail."

Further, Clause (2) of Section 4, Code mandates that "all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences."

41. Consequently, as a complaint can be made/filed by an authorised officer alone under the Special Act i.e. the Aircrafts Act, 1934, before the concerned Court, the local police can only forward the material collected by it during the investigation to such authorised officer. It shall be open to the authorised officer to take a decision in accordance with law with regard to filing or non-filing of a complaint.

CONCLUSION

42. Keeping in view the aforesaid findings, the present appeals are dismissed with liberty to the Appellate-State of Jharkhand to forward the material collected by it during investigation to such authorised officer under the Aircraft Act, 1934 within four weeks, who shall take a decision in accordance with law as to whether a complaint needs to be filed under the Aircraft Act, 1934 and the Rules framed thereunder.

.....J. [Abhay S. Oka]

.....J. [Manmohan]

New Delhi;

January 21, 2025.

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