

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(Crl)582/2008 and Crl.M.A. 5393/2008

% Date of reserve: 3rd Mach, 2009
Date of decision: 17th March, 2009

SANJAY ...PETITIONER
Through: Mr.N.S.Dalal, Advocate

Versus

STATE ...RESPONDENT
*Through: Ms.Mukta Gupta, Standing Counsel
for the State along with Inspector Shajwan
Singh, P.S. Alipur*

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers
may be allowed to see the judgment? YES
2. To be referred to Reporter or not? YES
3. Whether the judgment should be
reported in the Digest? YES

MOOL CHAND GARG, J.

1. By this writ petition filed under Article 226 of the of the Constitution of India read with Section 482 Cr.P.C, the petitioner seeks quashing of the FIR bearing No. 96/2008 dated 23.04.2008 registered at Police Station Alipur under Section 379/411/120B/34 IPC dated 23rd April, 2008 against the petitioner and others on the allegations that he was involved in illegal mining of sand from Yamuna Basin.

2. The FIR was registered by the police suo moto having come to know that some persons were removing and selling sand from the Yamuna Basin for the last ¾ days. On that basis on 22nd April, 2004

they committed a raid and visited the site where they found one dumper bearing Tata No. HR-69-1769 filled with the sand. The person who was driving the said dumper when asked to produce the documents failed to produce any document and rather told that he was behind illegal mining. At that time some other digging equipments were also found which were also taken into possession and the petitioner and some other persons were arrested. .

3. It is also the case of the police that acts which are the basis of this FIR tantamount to illegal mining which is an offence under section 379/411 of IPC besides being a cognizable offence under Section 21(6) of the Mines and Minerals (Development and Regulations) Act 1957 (hereinafter referred to as the said Act) and is also in violation of the orders of the Apex Court in *M.C.Mehta Vs. Union of India*.

4. According to the petitioner the registration of FIR in this case by the Police is illegal inasmuch as no offence was made out under Section 379/411/120-B/34 IPC in the facts of this case. It is submitted that offences if at all which could have been taken cognizance of would be under the provisions of the said Act. It is also submitted that regarding violation of the provisions of the said Act the cognizance can be taken only on the basis of a complaint which has to be filed under Section 22 of the said Act by an authorized officer. The aforesaid provision is reproduced hereunder:

“Cognizance of Offence – No Court shall take cognizance of any offence punishable under this Act or any Rule made there under except upon complaint in writing made by a person authorized in this behalf by the Central Government or by the State Government.”

From the reading of the said Section, it is clear that no FIR can

be registered concerning violation of the provisions of the said Act. Once the legislature has provided a particular remedy then certainly by no stretch of imagination FIR can be registered.

5. It is also stated that if any person removes the sand/clay without the permission then royalty from the amount of the same can be recovered and that too by way of procedure prescribed under the provisions of the said Act. It is also submitted that the allegations concerning removal of the sand from the land which belongs to one Shri Lalit Yadav, who is the bhoomidar of the said land which forms part of Khasra No. 964, 965 and 966 situated in the revenue estate of Village Jhangola, Delhi who had the permission to remove the sand from his fields issued by the Competent Authority and the factum of the permission being granted for removal of the sand/clay is known to the public authorities also. The police in fact, was informed of these things by the owner of the land and also by other persons, who were arrested along with the petitioner. In fact, all such persons have been falsely implicated in the said case. Copy of the permission so granted by the competent authority has been filed along with the petition.

6. It has been submitted that in view of the aforesaid facts, the arrest of the petitioner is illegal and without the authority of law as no FIR could have been registered in this case. The petitioner has relied upon a Judgment delivered in *Avtar Singh Vs. State of Punjab* reported as *AIR 1965 SC 666* and submitted that the said ratio of this judgment applies with full force to the facts of the present case. He also stated that till date, not a single case, which would have

been registered under the provisions of Indian Penal Code for the offence of removal of sand/clay by way of registering an FIR has been taken cognizance by a court. It is also submitted that no case has been registered in any Police Station concerning removal of sand without permission can be taken care of under the provisions of said Act by way of filing a complaint before a Magistrate by a duly authorized officer, In fact, provisions of the said Act will also not be attracted as the land in question was removed from the personal land of Shri Lalit Yadav, who is owner of the said land and has already got permission from the concerned authority to do so.

7. The petition was contested on behalf the respondents who filed a status report and opposed the prayer made by the petitioner. According to them that on the intervening night of 22/23/4/2008 SHO, Alipur along with staff while patrolling in the area having received secret information that illegal mining was being done in Yamuna Basin which lies in the area of his police station along with staff raided the site and arrested six accused namely Sunder S/o Rampat R/o Village Sungarpur, Sanjay Kumar S/o Bhagwan Das R/o Village Bakhtawarpur, Vinod S/o Sudersah R/o Village Mukhmailpur, Amin S/o Naim R/o Distt Mewat, Harun S/o Munshi and Aashu S/o Shahi Khan R/o Mewat Distt. Haryana. He also took possession of four trucks (Dumper), one tractor with water spreading shower to pave way for trucks. He also sized one electric 10 BHW motor with illegal tube-well and one heavy JCB (Pokhlane Machine) having capacity to dig very deep and used for loading trucks were seized. All the accused were doing illegal mining without any licence form

Govt. authority/licence. They had dug three mines very deep in canal shape and there dimensions are (1) 100 feet long X 20-30 feet Wide X 20-25 feet deep (Yamuna sand removed) (2) 50 feet Long, 30 feet deep (Yamuna sand removed) (3) 60 feet long, 12 feet wide and 10-12 feet deep (Yamuna sand removed). The case FIR No. 96/08 dated 23.4.08 under Section 379/411/120-B/34 IPC and under Section 21 of the said Act was registered at P.S. Alipur and the investigation was taken up. During the course of investigation it was revealed that illegal mining was being done by Lalit Yadav, Jagbir Singh and Hari Chand, Sanjay and Sunder Singh. The accused during investigation had stated that they were doing illegal mining. Their partner Lalit Yadav, Jagbir Singh and Hari Chand escaped under cover of darkness. Regarding the permission relied upon by the petitioner it is stated that on going through the permission dated 18.3.08 it was found that Sh. Lalit Yadav had been permitted for lifting sand/clay from agriculture land Khasra No. 964, 966, 965 situated in the revenue estate of village Jhangola, Delhi to make said land fit for cultivation but not more than 3 feet and the permission was for three months. That on above facts SDM/Narela was requested for demarcation of Khasra. On request Patwari Shri Mukesh and Field Kanoongo (Girdawar) Shri Baljeet made demarcation and gave report that sand was lifted form Khasra of 962/963/966 and not from Khasra 964/066/965. The measurement given by Kanoongo and Halka Patwari are (1) 100 feet long X 20-30 feet wide X 20-25 feet deep (Yamuna sand removed) (2) 50 feet long, 30 feet deep Yamuna sand removed (3) 60 feet long, 12 feet

wide and 10-12 feet deep (Yamuna sand removed). It is further submitted that thereafter SDM Narela gave his complaint that as per demarcation done by Halka Patwari and Girdawar/Kanoongo, accused persons were doing illegal mining from Khasra No. 962, 963 and part of 966 and it was directed that proper action in this matter against offender be taken.

8. The Standing Counsel, NCT of Delhi has submitted that the act/omission of the petitioner having indulged in illegal mining is an act of commission of theft which is a cognizable offence. Even otherwise, the offences are also punishable under Section 21(4) of the said Act which is also a cognizable offence in view of Section 21(6) of the said Act, which reads as under:

“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.”

9. It is further submitted that in view of Section 4 of the Act which permits extracting or mining operation only under a licence or lease, the operation of extracting the sand from the river bed without such permission becomes an act of commission of theft and being a cognizable offence such an act can be taken cognizance of by the local police who thus can register an FIR in this regard and investigate the matter accordingly. Further it is stated that the offences committed by the petitioner and others is punishable under two acts, action can be taken against the accused under both the Acts that is under the Indian Penal Code as well as under the said Act. Reliance has been placed on the Judgment of the Apex Court in *State of Bihar Vs. Murad Ali Khan and Ors.* reported in *AIR 1989 SC*

1. The relevant paragraphs of the aforesaid judgment are reproduced hereunder:

7. It was, however, suggested for the respondents that the offence envisaged by Section [9\(1\)](#) read with Section [2\(16\)](#) and Section [50\(1\)](#) of the Act, in its ingredients and content, is the same or substantially the same as Section [429](#), IPC and that after due investigation the police had filed a final report that no offence was made out and that initiation of any fresh proceedings against respondents would be impermissible. Section [429](#), IPC, which occurs in the chapter "Of mischief" provides:

429. Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees - Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

The offence of hunting any wild-animal as defined in Section [9\(1\)](#) read with Section [2\(16\)](#) of the Act is much wider.

Section [56](#) of the 'Act' provides:

56. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for the time being in force, for any act or omission which constitutes an offence against this Act or from being liable under such other law to any higher punishment or penalty than that provided by this Act:

Provided that no person shall be punished twice for the same offence.

We are unable to accept the contention of, Shri R. F. Nariman that the specific allegation in the present case concerns the specific act of killing of an elephant, and that such an offence, at all events, falls within the overlapping areas between Section [429](#), IPC on the one hand and [9\(1\)](#) read with [50\(1\)](#) of the Act on the other and therefore constitutes the same offence. Apart from the fact that this argument does not serve to support the order of the High Court in the present case, this argument is, even on its theoretical possibilities, more attractive than sound. The expression "any act or omission which constitutes any offence under this Act" in Section [56](#) of the Act, merely imports the idea that the same act or omission might constitute an offence under another law and could be tried under such other law or laws also.

The proviso to Section [56](#) has also a familiar ring and is a facet of the fundamental and salutary principles that permeate penology and are reflected in analogous provisions of Section [26](#) of General Clauses Act, 1897; Section [71](#) IPC; Section [300](#) of the Cr.P.C, 1973, and constitutionally guaranteed under Article [20\(2\)](#) of the Constitution. Section [26](#) of the General Clauses Act, 1897 provides:

26. Provision as to offences punishable under two or more enactments:

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Broadly speaking, a protection against a second or multiple punishment for the same offence, technical complexities aside, includes a protection against re prosecution after acquittal, a protection against re prosecution after conviction and a protection against double or multiple punishment for the same offence. These protections have since received constitutional guarantee under Article [20\(2\)](#). But difficulties arise in the application of the principle in the context of what is meant by "same offence". The principle in American law is stated thus:

...The proliferation of technically different offences encompassed in a single instance of crime behaviour has increased the importance of defining the scope of the offence that controls for purposes of the double jeopardy guarantee.

Distinct statutory provisions will be treated as involving separate offenses for double jeopardy purposes only if "each provision requires proof of an additional fact which the other does not" (*Blockburger v. United States* (1931) 284 US 299, 304). Where the same evidence suffices to prove both crimes, they are the same for double jeopardy purposes, and the clause forbids successive trials and cumulative punishments for the two crimes. The offences must be joined in one indictment and tried together unless the defendant requests that they be tried separately. (*Jeffers v. United States* (1977) 432 US 137.

(See "Double Jeopardy" in the *Encyclopedia of Crime and Justice* vol. 2, (p. 630) 1983 Edn. by Sanford H. Kadish: The Free Press, Collier Mac Millan Publishers, London)

The expressions "the same offence", "substantially the same offence" "in effect the same offence" or "practically the same", have not done much to lessen the difficulty in applying the tests to identify the legal common denominators of "same offence". Friedland in "Double Jeopardy" (Oxford 1969) says at page 108:

The trouble with this approach is that it is vague and hazy and conceals the thought processes of the Court. Such an inexact test must depend upon the individual impressions of the judges and can give little guidance for future decisions. A more serious consequence is the fact that a decision in one case that two offences are "substantially the same" may compel the same result in another case involving the same two offences where the circumstances may be such that a second prosecution should be permissible....

10. It is also submitted that merely because Section 22 prohibits taking cognizance of an offence under Section 21(4) except upon a

written complaint by an authorized officer, it does not prevent the police authorities to take cognizance of the offence and to investigate the matter. It is a different matter when a challan is filed it has to be accompanied by a complaint by an authorized officer before the learned Judge. It is submitted that in the case of *Ram Chander Vs. P.K.Gupta and Anr.* reported in 2002 IV AD (Cr.) DHC 127, this Court has held:

“7.Sub-section (2) of Section 4 of Criminal Procedure Code provides that all offences under any other law are to be investigated, inquired into, tried and otherwise dealt with according to the Cr.P.C., however, subject to the provisions contained in the special law regulating the manner or the place of investigation or enquiry into or otherwise dealing with such offence, as was held in *Moti Lal Vs. Central Bureau of Investigation & Anr.* JT 2002 (4) SCt 31. *The offences under the Act for manufacturing and sale of spurious/adulterated drugs, (if the same is likely to cause grievous hurt as defined in Section 320 IPC) are punishable with minimum imprisonment of five years’ which may extend to life imprisonment. These offences are cognizable, non-bailable and triable by the Court of Session as per First Schedule of Cr.P.C. The police has the power to register the First Information Report under Section 154, power to arrest the offender without warrant under Section 41 and power to search and seizure without warrant under Section 102. But if after completion of investigation, police submits a report under Section 173 Cr.P.C. to the Court, cognizance on such a report cannot be taken because of the embargo created by Section 32 of the Act, which postulates that the cognizance of the offences under the Act can be taken only on the complaint filed by the “Inspector” or by the “person aggrieved” or by the “recognized consumer association”. Section 32 of the Act reads as under:-*

32. Cognizance of offences.-(1) No prosecution under this Chapter shall be instituted except by an Inspector or by the person aggrieved or by a recognized consumer association whether such person is a member of that association or not.

(2) No Court inferior to that of a Metropolitan Magistrate or of a Judicial Metropolitan Magistrate or of a Judicial Magistrate of the first class shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.”

It is needless to observe that despite all criticism, the Investigating Officers of the Police are better trained and equipped for prevention, investigation and prosecution of crimes. To repeat, most of the offences punishable under Section 27 of the Act for manufacture or sale etc. of spurious or adulterated drugs are cognizable and non-bailable. Some of the offences are triable by the Court of Sessions. The offences being cognizable, the aggrieved person has a right to lodge a report with the police and the police, in turn, is bound to register a formal FIR and start investigation, which culminates in a report under Section 173 of the Cr.P.C. Therefore, I see no reason why cognizance of the offences under the Act should not be permitted to be taken on such a report by the police agencies or by the CBI in suitable canon. There can be no manner of

doubt that several life saving drugs can make difference between life and death to a patient at a critical time. The use of spurious/adulterated drugs would be a horrible thing even to contemplate. However, it is for the legislature to consider suitable amendments. Till such time, remedial steps are taken, in my view, it is permissible to adopt a functional approach to give effect to the purpose and spirit of the enactment. The procedure endorsed by the Division Bench of this Court in Moti Lal's case (supra) should be followed. After completion of investigations, instead of sending report under Section 173 Cr.P.C. to the Drug Inspector, the same should be filed in the court along with a complaint under Section 32 of the Act with a specific prayer that cognizance be taken on the complaint. The Drug Inspector should be associated during investigation so that procedural aspects of seizure analysis are properly followed."

11. On the other hand, learned counsel for the petitioner submits that in the case of *Avtar Singh Vs. State of Punjab (supra)* the issue has already been resolved. In the said judgment while interpreting Section 39 of the Electricity Act, 1910 read with Section 378 of the Indian Penal Code it has been categorically held that extraction of electricity which is punishable under Section 39 of the Indian Electricity Act, 1910 cannot be considered as theft because Section 39 of the Indian Electricity Act creates an independent offence and therefore, the registration of the FIR by the Police in this case under Section 379 of the Indian Penal Code was not justified. The relevant paragraph of the aforesaid judgment is reproduced hereunder:-

"6. Next as to Section 39 not providing for a punishment, apart from the question whether an offence can be created by a statutory provision without that provision itself providing for punishment, on which we express no opinion, we think it clear that Section 39 must be read as providing for a punishment. First it is clear to us that the Act contemplated it as doing so, for Sections 48 and 49 speak of penalties imposed by Section 39 and acts punishable under it. In *Public Prosecutor v. Abdul Wahab*³ it was stated that the language used in Sections 48 and 49 cannot be regarded as strictly accurate. Such an interpretation is not permitted for "the words of an Act of Parliament must be construed so as to give sensible meaning to them. The words ought to be construed *ut res magis valeant quam pureat's Curtis v. Stovin*⁷. And we find no difficulty in taking the view that Section 39 does provide for a punishment. It says that the dishonest abstraction of energy shall be deemed to be theft within the meaning of the Indian Penal Code. The section, therefore makes something which was not a theft within that Code, a theft within it, for if the abstraction was a theft within the Code, the section would be unnecessary. It follows from this that the section also makes that theft punishable in the manner provided in it, for if the act is deemed to be a theft within the Code it must be so deemed for all purposes of it, including the purpose of incurring the punishment. In *State v. Maganlal Chunilal Bogawat*¹ it

was also stated that the offence of abstraction of energy is by Section 39 expressly made punishable under Section 379. We find no such express provision in Section 39. Even if there was such a provision in the Act, the liability to punishment would arise not under the Code but really because of Section 39. It will be impossible to hold that without Section 39 there is any liability to punishment under the Code for any abstraction of electrical energy. In *Public Prosecutor v. Abdul Wahab*³ it was observed that since Section 39 created a theft within the meaning of the Indian Penal Code by means of a fiction, it followed that as the fiction could not be departed from the offence so fictionally created was one under the Code. We are unable to appreciate this reasoning. If a provision says that something which is not an offence within the meaning of another statute is to be deemed to be such the offence is, in our view, created by the statute which raises the action and not by the statute within which it is to be deemed by that fiction to be included. If the other view was correct, it would have to be held that the offence was one within the last mentioned statute *proprio vigore* and this clearly it is not. At this stage we might point out that in *Abdul Wahab case*³ it was stated that "It can be accepted that Section 39 of the Act creates an offence." It seems to us that if so much is conceded, it is impossible to say that Section 50 would not apply to a prosecution in respect of it for it applies to every prosecution "for any offence against this Act".

12. I have given my thoughtful consideration to the rival submissions. The issues which arises for consideration in this case are three fold; i.e (i) Whether the police could have registered an FIR in this case;(ii) Whether a cognizance can be taken by the Concerned Magistrate on the basis of a Police report and (iii) Whether a case of theft was made out for permitting registration of an FIR under Section 379/411 of the Indian Penal Code.

13. As far as the issue of registration of an FIR by the Police even in respect of offences punishable under the special Acts in no more *res integra*. This issue came up for consideration before this Court in the context of electricity Act 2003 wherealso the cognizance of such an offence is barred except upon a complaint under Section 151 of the electricity Act, in *Bimla Gupta Vs. State and Anr.* reported in 136 (1007) *Delhi Law Times* 521 as well as before this Court in *Crl.M.C.4371/2005* titled as *Abhay Tyagi Vs. State (Delhi Admn.) and Anr.*

decided on 3rd March, 2009 *it has been held by me that taking into consideration* Section 4 of the Cr.P.C. the offences which are cognizable can be investigated by the Police after registration of an FIR despite the bar created upon a Magistrate to take cognizance of such offence except on a written complaint.

14. In Bimla Gupta's case (supra) after taking note of the Electricity Act on the same issue, it was observed: -

“9. Before we answer these questions, let us take stock of the provisions of the Code of Criminal Procedure as highlighted by the learned senior counsel for the NDPL. The Code of Criminal Procedure demarcates the offences into two categories, namely, cognizable and non-cognizable offences. As per Part II of Schedule I of the Code, any offence punishable with three years or more of imprisonment is a cognizable offence. Section [154](#) of the Code prescribes that in respect of every offence which is a cognizable one, information thereof is to be given to an officer in-charge of a police station, who shall reduce the same into writing. Thus, it is the duty and responsibility of the police authorities to register a First Information Report. Sub-section (3) of Section [154](#) further obligates the police authorities to investigate the same as per the manner prescribed in subsequent sections and thereafter submit its report to the Magistrate, who is empowered to take cognizance of the offence on police report, under Section [173](#) of the Code, on completion of investigation. Interpreting the aforesaid provision this Court in the case of *Deepa Singh v. State* 1998 IV AD (Delhi) 492 held that mode of registration of the FIR was permissible. That was a case relating to the provisions of Delhi Municipal Corporation Act. Violation of Sections [332](#) and [466-A](#) of the Delhi Municipal Corporation was alleged. The Court held that ordinary Criminal Courts under Section [5](#) of the Act will have the jurisdiction to deal with such offences and the plea of ouster of jurisdiction of the ordinary Criminal Courts was rejected. It may be noted that Section [467](#) of the Delhi Municipal Corporation Act is para material with Section [151](#) of the Electricity Act as that provision also lays down that no Court can proceed to the trial of any offence under Section [332](#) of the Act except a complaint of the Commissioner, Municipal Corporation of Delhi or any other person authorised by him by general or special order in this behalf. Argument was precisely the same, namely, no complaint had been filed by the Commissioner or any person authorised by him and FIR was lodged with the police and which submitted the report to the MM and, therefore, the MM in the absence of complaint ought not to have proceeded with the trial of the case on a police report.

The Court while rejecting the contention referred to the provisions of Section [4](#) of the Cr.P.C. which reads as under:

4. Trial of offence under the Indian Penal Code and other laws.-(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions

hereinafter contained.

(2) 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 of place of investigating, inquiring into, trying or otherwise dealing with such offences.

10. It is apparent from the reading of Section [4](#) that provisions of the Cr.P.C. would be applicable where an offence under the IPC or under any other law is being investigated, inquired into, tried or otherwise dealt with. These offences under any other law could also be investigated, inquired into or tried with according to the provisions of Cr.P.C. except in case of an offence where the procedure prescribed there under is different than the procedure prescribed under the Cr.P.C. The Court noted that Section [466A](#) of the Delhi Municipal Corporation Act specifically lays down that the Code of Criminal Procedure shall apply to the offences prescribed under various provisions of the said Act as if it were a cognizable offence for the purpose of investigation of such offence. It is so specifically provided under Section [155](#) of the Electricity Act also. Thus, it is not a case where any special or different procedure is prescribed. Rather, the procedure contained the Code of Criminal Procedure is made applicable for the offences to be tried under the Electricity Act as well. In fact, the submission of the learned Counsel for the petitioner itself is that for filing of the complaint, the procedure contained under Section [200](#) etc. Cr. P.C. would be applicable.

11. While brushing aside the contention that the Court could not proceed to the trial of offence under Section [322](#) of the Delhi Municipal Corporation Act unless there was a complaint filed before the Court, following pertinent observations were made:

6. Learned Counsel for the petitioner submitted that since the complaint was not filed by the Commissioner or any person authorized by him, therefore, the Court could not proceed to the trial of the offence under Section [332](#) of the Act. In making the submission, learned Counsel for the petitioner has not given due consideration to the fact that the prosecution could be initiated upon information received by the Court from an officer of the Corporation. Such an information can be received by the court from the Officer of the Corporation either directly or through the agency of the police. Where the police starts investigation into the matter on the information furnished by the authorised officer of the Corporation, who is competent to file a complaint, and the police on the basis of the said information investigates the matter and finally files a report under Section [173](#) of the Code of Criminal Procedure, it cannot be said that the Court to which such a report is filed is not acting on the information received from the authorized officer of the Corporation. Section [467](#) does not lay down as to how the information should be received by the Court from the Commissioner or the person authorized by him in this behalf. It nowhere says that the information should be directly filed in the Court by the Commissioner or the person authorized by him in this behalf. therefore, the information could also be received by the Metropolitan Magistrate through the report filed by the police under Section [173](#) of the Code which in turn is based on the complaint of the Commissioner or the person authorized by him.”

15. This Court in *Abhay Tyagi's case (supra)* has observed as under:-

“14. Thus, the clear principle which emerges from the aforesaid discussion is that even when a Magistrate is to take cognizance when a complaint is filed before it, that would not mean that the police cannot take cognizance thereof.

15. It is stated at the cost of repetition that the offences under the Electricity act are also to be tried by applying the procedure contained in Cr.P.C. Thus, it cannot be said that complete machinery has been provided under the Electricity Act as to how such offences are to be dealt with. In view thereof, I am of the opinion that learned Counsel for the NDPL, is right in his submission that if the offence under the Cr.P.C. is cognizable, provisions of Chapter XII containing Section [154](#) Cr.P.C. and onward would become applicable and it would be the duty of the police to register the FIR and investigate into the same. Maxim generali bus specialia derogant shall have no application when the provisions are read in the aforesaid manner. Sections [135](#) and [138](#) only prescribe that certain acts relating to theft of electricity etc. would also be offences. It also enables certain persons/parties, as mentioned in Section [151](#), to become complainant in such cases and file complaint before a Court in writing. When such a complaint is filed, the Court would be competent to take cognizance straightway. However, that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and the cases under this Act are also to be governed by the Code of Criminal Procedure.”

16. In the present case, the petitioner claims that the mining was being done at his own plot by Mr.Lalit Yadav, the question as to whether he did mining of somebody's plot or indulged in mining beyond the permission granted were all matter of satisfaction of the competent court who can file a complaint if so satisfied and therefore, the question of registration of an FIR in this case under Section 379/411 IPC does not arise more so because there is nothing on record that before the registration of the case any complaint was received by the Police from any aggrieved party. In

this regard, the judgment delivered in *Avtar Singh's case (supra)* becomes applicable.

17. The argument of learned Standing counsel that the offence committed by the petitioner also makes out a separate offence under Section 379 IPC relying upon the judgment delivered in *Murad Ali Khan's case (supra)* cannot be accepted because in that case the Court was dealing with the provisions of the Wild Life Act where a specific provision has been made under Section 56 of the Wild Life (Protection) Act, 1972, to permit prosecution for the same offence under the two different Acts if the offence disclosed makes out a case for prosecution under both the Act, which is not the case in hand.

18. In view of the aforesaid and taking into consideration the provisions contained under Section 21(6) of the said Act I hold that:

(i) The offence under the said Act being cognizable offence, the Police could have registered an FIR in this case;

(ii) However, so far as taking cognizance of offence under the said Act is concerned, it can be taken by the Magistrate only on the basis of a complaint filed by an authorized officer, which may be filed along with the Police report;

(iii) Since the offence of mining of sand without permission is punishable under Section 21 of the said Act, the question of said offence being an offence under Section 379 IPC does not arise because the said Act

makes illegal mining as an offence only when there is no permit/licence for such extraction and a complaint in this regard is filed by an authorized officer.

19. In view of the aforesaid, it is ordered that respondent No.1 shall amend the FIR which has been registered in this case by converting the offence mentioned therein under Sections 379/411/120B/34 IPC to Section 21 of the Mines and Minerals (Development and Regulations) Act 1957.

20. With these observations, the petition stands disposed of.

Crl.M.A. 5393/2008

In view of the orders passed above, this application also stands disposed of.

MOOL CHAND GARG, J.

MARCH 17, 2009