

Court No. - 88

Case :- APPLICATION U/S 482 No. - 35889 of 2023

Applicant :- Shyam Kishor

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Vikrant Gupta, Rajesh Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh, J.

1-Heard learned counsel for the applicant, learned Additional Government Advocate for the State of U.P./opposite party no.1 and perused the record.

2-This application under Section 482 Cr.P.C. has been filed by the applicant to quash the impugned Charge sheet No. 443 of 2018 dated 25.06.2018, the cognizance/ summoning order dated 17.01.2020 and proceedings of Criminal Case No. 144 of 2020 (State Vs. Shyam Kishore and others), arising out of Case Crime No. 1172 of 2017, under Sections 4/21(4) of Mines and Minerals (Development and Regulation) Act, Police Station- Naini, District-Allahabad pending in the Court of learned Additional Chief Judicial Magistrate, Court No.2, Allahabad.

3-The issue involved in the matter lies in a very narrow compass. The main substratum of argument of learned counsel for the applicant is that vide impugned summoning order dated 17.01.2020, the applicant has been summoned under Sections 4/21 (4) of Mines and Minerals (Development and Regulation) Act to face trial, whereas the Magistrate concerned was not empowered to take cognizance on the police report for the aforesaid alleged offence, because with regard to same, there is a procedure for filing complaint in view of the Section 22 of Mines and Minerals (Development and Regulation) Act.

4-*Per contra*, learned Additional Government Advocate for the State does not dispute the submissions of learned counsel for the applicant and

submits that the applicant cannot be prosecuted on the police report, if the offence is of Mines and Minerals (Development and Regulation) Act.

5-Having heard learned counsel for the parties, I find that pure legal question is involved in the matter therefore no useful purpose would be served in keeping this application pending before this Court and the same is being disposed of with the consent of the counsel for the parties at the admission stage itself.

6-Having examined the matter in its entirety, this Court is of the view that when there is a conflict between a special and general law, indisputably the special enactment shall prevail over the general law.

7-The issue in this regard has been settled by the Apex Court in the matter of **(NCT of Delhi) vs. Sanjay (2014) 9 SCC 772** as well as by this Court in the case of **Imran and others Vs. State of U.P. and another, (2020) 3 All LJ 21**. In the light of law laid down in the aforesaid judgments this Court is of the opinion that so far as cognizance taken by the Magistrate concerned on the impugned charge-sheet for the alleged offence and summoning of accused-applicant vide order dated 17.01.2020 under Sections 4/21 (4) of the Mines and Minerals (Development and Regulation) Act is concerned, the same is not liable to be sustained in the eyes of law on account of categorical bar as noted above.

8-Accordingly, summoning order dated 17.01.2020 and further proceeding of aforesaid Criminal Case No. 144 of 2020 are hereby quashed with liberty to the prosecution/Officer concerned to file complaint against the applicant in the matter.

9-With the aforesaid observations and directions, this application under Section 482 Cr.P.C. is **allowed**.

10-Learned A.G.A. shall communicate this order to the informant /opposite party no.2 within two weeks.

Order Date :- 30.11.2023

Anurag/-