

Court No. - 88

Case :- APPLICATION U/S 482 No. - 40850 of 2023

Applicant :- Suneel Kumar Singh And Another

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

Counsel for Applicant :- Krishna Kant Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1. Heard learned counsel for the applicants, 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 applicants with a prayer to quash the charge-sheet No. 74 of 2021 dated 08.05.2021, summoning order dated 11.08.2021 and proceedings of Case No. 2294 of 2021 (*State Vs. Rajendra and others*), arising out of Case Crime No. 0026 of 2021, under Section 379 IPC, Sections 3/5 of Prevention of Damages to Public Property Act, 1984, Sections 4/21 Mines and Minerals (Development and Regulation) Act 1957 and Sections 3, 57, 70 of U.P. Sub Mineral (Transportation) Rule, 1963, Police Station Kotwali Chunar, District Mirzapur, pending before learned Chief Judicial Magistrate, Mirzapur.

3. The issue involved in the matter lies in a very narrow compass. The main substratum of argument of learned counsel for the applicants is that vide impugned summoning order dated 11.08.2021, the applicants have been summoned under Sections 379 IPC, Sections 3/5 of Prevention of Damages to Public Property Act, 1984, Sections 4/21 Mines and Minerals (Development and Regulation) Act 1957 and Sections 3, 57, 70 of U.P. Sub Mineral (Transportation) Rule, 1963 to face trial, whereas the Magistrate concerned was not empowered to take cognizance on the police report for the alleged offence Sections 3, 57, 70 of U.P. Sub Mineral (Transportation) Rule, 1963 and Sections 4/21 Mines and Minerals (Development and Regulation) Act because with regard to it, there is a procedure for filing complaint.

4. Per contra, learned Additional Government Advocate for the State opposed the said submission of learned counsel for the applicants by contending that if the act of accused makes out a cognizable offence under IPC, under Section 21 of MMDR Act, under Damages to Public Property Act as well as under U.P. Sub Mineral (Transportation) Rule, 1963, registration of F.I.R. under the aforesaid enactments is not illegal as there is no bar to investigate the matter by the police when cognizable offence has taken place irrespective of penal provisions whether under the special enactment or general law, but does not dispute that in view of Section 22 of the Mines and Minerals (Development and Regulation) Act and U.P. Sub Mineral (Transportation) Rule, 1963, the applicant cannot be prosecuted under Sections 4/21 Mines and Minerals (Development and Regulation) Act and Sections 3, 57, 70 of U.P. Sub Mineral (Transportation) Rule, 1963 on the police report.

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, therefore on account of categorical bar under Section 22 of the MMDR Act 1957, the police officer cannot submit police report under Section 173 Cr.PC with regard to offence under Mines and Minerals (Development and Regulation) Act.

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 impugned charge-sheet for the offence under Section 379 IPC and Sections 3/5 of Prevention of Damages to Public Property Act, 1984 are concerned, it cannot be said to be illegal and without authority but so far as cognizance taken for the offence under Sections 4/21 Mines and Minerals (Development and Regulation) Act and Sections 3, 57, 70 of U.P. Sub Mineral (Transportation) Rule, 1963 on the impugned charge-sheet dated 08.05.2021 are concerned, the same are not liable to be sustained in the eyes of law on account of categorical bar contained in Section 22 of the Mines and Minerals (Development and Regulation) Act.

8. Accordingly, further proceeding of Case No. 2294 of 2021 with regard to offence under Sections 4/21 Mines and Minerals (Development and Regulation) Act and Sections 3, 57, 70 of U.P. Sub Mineral (Transportation) Rule, 1963 are concerned, the same are hereby quashed with liberty to the prosecution/Officer concerned to file complaint against the applicants.

9. It is made clear that so far as order taking cognizance under Section 379 IPC and Sections 3/5 of Prevention of Damages to Public Property Act, 1984 are concerned, that has not been interfered by this Court and the concerned Court below is at liberty to proceed in accordance with law against the applicants pursuant to the charge-sheet dated 08.05.2021.

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

11. Office is directed to communicate the copy of this order to the concerned court below within two weeks.

Order Date :- 15.12.2023

ADY