

Court No. - 13

Case :- APPLICATION U/S 482 No. - 7823 of 2024

Applicant :- Rais Ahmad And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Home Civil Sectt. Lko And Another

Counsel for Applicant :- Mohammad Afsar, Mohd. Nafees, Pawan Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the applicants as well as learned A.G.A. for the opposite party nos. 1 and 2 and perused the record.

2. The present application has been filed seeking following main relief:

"Wherefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash/set-aside the impugned charge sheet dated 1.10.2023 arising out of Case Crime No.198/2023, Under Sections: 3(1)/58/72(1) of the Uttar Pradesh Minor Mineral (Concession) Rules, 2021 and sections 4/21 of the Mines and Minerals (Development and Regulation) Act, 1957, Police Station: Wazeerganj, District: Lucknow as well as cognizance/summoning order dated 8.2.2024 passed by learned Chief Judicial Magistrate, Lucknow in Criminal Case No.10187/2024 (State Versus Siraj Ahmad & Another) including entire criminal proceeding initiated in pursuance thereof, as contained in Annexure No.1&2 respectively to this Petition."

3. Brief facts of the case, for the purposes of seeking relief, quoted above, indicated by learned counsel for the applicants are as under:

(i) An FIR/Case Crime No. 0198 of 2023 was lodged on 05.07.2023 under Section(s) 3(1)/58/72(1) of the Uttar Pradesh Minor Mineral (Concession) Rules, 2021 (In short "Rules of 2021") and Section(s) 4/21 of the Mines and Minerals (Development and Regulation) Act, 1957 (In short "Act of 1957") at Police Station - Wazirganj, District - Lucknow.

(ii) Thereafter, after investigation, the charge-sheet dated 01.10.2023 was filed by the Investigating Officer before the Court concerned namely Chief Judicial Magistrate,

Lucknow (in short "Magistrate") in Criminal Case No. 1087 of 2023 (State Vs. Siraj Ahmad And Another) arising out of FIR/Case Crime No. 0198 of 2023.

(iii) The Magistrate, on 08.02.2024, took cognizance and passed the order summoning the applicants herein on the same date i.e. 08.02.2024.

4. The prayer, quoted above, has been sought on the sole ground that as per the mode and manner prescribed under the relevant provisions, the complaint case can only be instituted as such the entire proceedings have contrary to law are liable to be interfered by this Court.

5. In support of the ground aforesaid, it is stated that issue in this case is squarely covered by Division Bench of this Court at Allahabad in the judgment passed on 05.09.2014 in *Criminal Misc. Writ Petition No. 14971 of 2014 (Mahendra Kumar Yadav and Another Vs. State of U.P. and 2 Others)*.

6. The relevant paras of the said judgment, as referred, are extracted herein-under:

"After respective arguments has been advanced, the factual situation that is so emerging in the present case is that vehicle with registration No.UP63-T-2436 and vehicle with registration No. UP44-T-6002 has been seized by the police on 10th August, 2014 for transporting minor mineral (sand). The minor mineral (sand) in question has been loaded against receipt no.33731 page no.20 to 38 to the tune of 50 tonnes and at the point of time when said seizure has been carried out, it was found that it was overloaded and accordingly truck in question was challaned by the Inspector under Section 207 of Motor Vehicle Act and information was also given to the Mines Department and it was found that the minor mineral that was loaded therein was over and above the document that was there and it was mentioned that on account of excess minor mineral being there, there has been loss of revenue and the said act of petitioners is in violation of Section 4/21 of the Mines & Minerals (Development & Regulation) Act, 1957 and section 3/57 and 70 of U.P. Minor Minerals (Concession) Rules, 1963 and as same is punishable in view of this, the Mines Inspector

proceeded to lodge FIR, and thus impelling the petitioners to be before this Court.

The question is can such a FIR could have been registered once under Mines & Minerals (Development & Regulation) Act, 1957 there is a clear cut provision provided for under Section 22 that no Court can take cognizance of any offence punishable under this Act or any Rules made therein except upon a complaint made by a person authorized in this behalf by the Central Government or State Government.

In this regard the relevant provisions of the Act and the Rules are being looked into. Section 4, 21, 22, 23A(1), 23B, 24 of the Mines & Minerals (Development & Regulation) Act, 1957 provides for as follows:

"Section 4 of the Mines and Minerals (Regulations and Development) Act, 1957 (the Act) provides for general restrictions on undertaking prospecting and mining operations. Sub-section (1) provides that no person shall undertake any prospecting or mining operations in any area except under and in accordance with the terms and conditions of a prospecting license, or, as the case may be, a mining lease, granted under the Act and the Rules made thereunder. Section 20 provides that the Act and Rules will apply to all renewals of prospecting license and mining leases. Section 21 provides for penalties. Sub-section (1) of Section 21 provides that whoever contravenes the provisions of sub-section (1) of Section 4 shall be punished with imprisonment for a term, which may extend to 2 years, or with fine, which may extend to Rs.10,000/- or both. Under sub-section (2) any Rule made under the Act may provide that the contravention shall be punishable with imprisonment for a term, which may extend to one year or with fine, which may extend to Rs.5000/- or with both and in Mines & Minerals (Development & Regulation) Act, 1957 the case of continuing contravention with an additional fine, which may extend to Rs.500/- for every day during which such contravention continues, if conviction for the first such contravention. Sub-sections 3, 4, 5 and 6 of Section 21 provides as follows:-

"(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal procedure, 1973, an offence under sub-section(1) shall be cognizable."

Section 22 provides that no Court shall take cognizance of any offence punishable under the Act or any Rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government. Section 23A provides for compounding of offence and is quoted as below:-

"23A (1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify:

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith."

Power to search, and entry and inspection is given under Section 23B and Section 24 as follows:-

"23B Power to search If any gazetted officer of the Central or a State Government authorised by the Central Government [or a State Government, as the case may be] in this behalf by general or special order has reason to believe that any mineral has been raised in contravention of the provisions of this Act or rules made thereunder or any document or thing in relation to such mineral is secreted in any place [or vehicle], he may search for such mineral, document or thing and the provisions of section 100 of the Code of Criminal procedure, 1973 shall apply to every such search.

24 Power of entry and inspection (1) For the purpose of ascertaining the position of the working, actual or prospective, of any mine or abandoned mine or for any other purpose connected with this Act or the rules made thereunder, any person authorised by the [Central Government or a State Government] in this behalf, by general [] order, may-

(a) enter and inspect any mine;

(b) survey and take measurements in any such mine;

(c) weigh, measure or take measurements of the stocks of minerals lying at any mine;

(d) examine any document, book, register, or record in the possession or power of any person having the control of, or connected with, any mine and place marks of identification thereon, and take extracts from or make copies of such document, book, register or record;

(e) order the production of any such document, book, register, record, as is referred to in clause (d); and

(f) examine any person having the control of, or connected with, any mine.

(2) Every person authorised by the [Central Government or a State Government] under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, and every person to whom an order or summons is issued by virtue of the power conferred by clause (c) or clause (f) of that sub-section shall be legally bound to comply with such order or summons, as the case may be."

Rule 3, 57 and 70 of U.P. Minor Minerals (Concession) Rules 1963 provides for as follows:

Rule 3 : Mining operations to be under a mining lease or mining permit:

(1) No person shall undertake any mining operations in any area within the State of any minor minerals to which these rules are applicable except under and in accordance with the terms and conditions of a mining lease or mining permit granted under these rules:

Provided that nothing shall affect any operations undertaken in accordance with the terms and conditions of mining lease or permit duly granted before the commencement of these rules.

(2) No mining lease or mining permit shall be granted otherwise than in accordance with the provisions of these rules.

Rule 57 : Penalty for unauthorised mining: Whoever contravenes the provisions of rule 3 shall on conviction be punishable with imprisonment of either description for a term, which may extend up to six months or with fine which may extend to one thousand rupees, or with both.

Rule 70: Restrictions on transport of the minerals:

(1) The holder of a mining lease or permit or a person authorised by him in this behalf may issue a pass in Form MM-11 to every person carrying, a consignment of minor mineral by a vehicle, animal or any other mode of transport. The State Government may, through the District Officer, make arrangements for the supply of printed MM-11 Form books on payment basis.

(2) No person shall carry, within the State a minor mineral by a vehicle, animal or any other mode of transport excepting railway, without carrying a pass in Form MM-II issued under sub-rule (I).

(3) Every person carrying any minor mineral shall, on demand by any officer authorised under rule 66 or such officer as may be authorised by the State Government in this behalf, show the said pass to such officer and allow him to verify the correctness of the particulars of the pass with reference to the quantity of the minor mineral.

(4) The State Government may establish a check post for any area included in any mining lease or permit, and when a check post is so established public notice shall be given of this fact by publication in the Gazette and in such

other manner as may be considered suitable by the State Government.

(5) No person shall transport a minor mineral for which these rules apply from such area without first presenting the mineral at the check post established for that area for verification of the weight or measurement of the mineral.

(6) Any person found to have contravened any provision of this rule shall, on conviction, be punishable with imprisonment of either description for a term, which may extend to six months or with fine which may extend to one thousand rupees or with both."

Section 22 of Mines & Minerals (Development & Regulation) Act, 1957 is clear and categorical that cognizance of an offence can be taken only on a complaint made in writing by a person authorised. Thus, this is writ apparent that in case, action is required to be undertaken, then a competent authority has to file a complaint and lodging of FIR is not at all provided for under the scheme of the Act or rules. Even this Court in Writ Petition No.75128 of 2011 (Ram Dayal vs. State of U.P. and others) has proceeded to give following direction:

"18. In these alarming circumstances, we direct that henceforth in every case of illegal mining and unauthorised transportation of minerals, the District Magistrate/Mines Officer or any competent authority authorised by the State Government, will seize the vehicles and minerals and lodge a criminal complaint against the persons indulging in such offences. The lodging of criminal complaint must be made a rule, and the compounding an exception. In every case of compounding of offence, if the competent authority does not consider it appropriate to seize the truck and the minerals and decides not to file a criminal complaint, such officer or authority must record sufficient reasons as to why in his view the compounding will be sufficient deterrent to the offence without compromising public interest."

On the matter being taken up today, this fact has been mentioned that pursuant to the judgment of this Court, Government order has been issued on 4th May, 2012, and therein note of the aforementioned judgment has been taken and the government order in itself proceeds to provide for lodging of a complaint and does not provide for lodging of FIR.

Apex Court, in the case of State of NCT New Delhi vs. Sanjay, Criminal Appeal No.499 of 2011, decided on 4.9.2014, while deciding the bunch matter has precisely taken the view, that the prohibition

contained in Section 22 of the Act against prosecution of a person except on complaint made by the officer is attracted only when such a person is sought to be prosecuted for contravention of provision of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code. Relevant extract of the said judgment is as follows:

"Reading the provisions of the Act minutely and carefully, prima facie we are of the view that there is no complete and absolute bar in prosecuting persons under the Indian Penal Code where the offences committed by persons are penal and cognizable offence.

Sub-section (1A) of Section 4 of the MMDR Act puts a restriction in transporting and storing any mineral otherwise than in accordance with the provisions of the Act and the rules made thereunder. In other words no person will do mining activity without a valid lease or license. Section 21 is a penal provision according to which if a person contravenes the provisions of Sub-section (1A) of Section 4 shall be prosecuted and punished in the manner and procedure provided in the Act. Sub-section (6) has been inserted in Section 4 by amendment making the offence cognizable notwithstanding anything contained in the Code of Criminal Procedure 1973.

Section 22 of the Act puts a restriction on the court to take cognizance of any offence punishable under the Act or any rule made thereunder except upon a complaint made by a person authorized in this behalf.

It is very important to note that Section 21 does not begin with a non-obstante clause. Instead of the words

"notwithstanding anything contained in any law for the time being in force no court shall take cognizance.....", the Section begins with the words "no court shall take cognizance of any offence."

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 river bed.

There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and

authorized under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorized officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.

However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

From a close reading of the provisions of 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, gravels and other minerals from the river, which is the property of the State, out of 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 person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having

jurisdiction for the purpose of taking cognizance as provided in Section 190 (1)(d) of the Code of Criminal Procedure.

After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Indian 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 river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., 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 authorized officer for taking cognizance in respect of violation of various provisions of the MMRD 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 concerned Magistrates to proceed accordingly."

Here in the case in hand, offence alleged to have been committed by petitioners, are in reference to the provisions of MMDR Act and at no point of time, in the FIR concern petitioners have been attributed with the charge of commission of an offence under Indian Penal Code.

Once such is the factual situation, then lodging of FIR in the facts of the case alleging contravention of the provisions of the Act and Rules and accordingly, the FIR dated 22.8.2014 registered as Case Crime No.201/2014 u/s 4/21, Mines and Minerals (Development and Regulation) Act, 1957 and Rule 3/57 and 70 of U.P. Minor Minerals (Concession) Rules, 1963, P.S. Saiyad Raja, Sadar, District Jaunpur is quashed and it is made clear that quashing of present writ petition will not come in the way of the authorities concerned to file a complaint under Section 22 of the Mines & Minerals (Development & Regulation) Act, 1957."

7. Reliance has also been placed on the judgment passed by the Hon'ble Apex Court in the case of *Kanwar Pal Singh v. State of U.P.*, (2020) 14 SCC 331: (2020) 4 SCC (Cri) 815: 2019 SCC OnLine SC 1652.

8. What was the issue before the Hon'ble Apex Court in the case of *Kanwar Pal Singh (Supra)*, can be deduced from the para quoted

herein-under:

"1. Leave granted. Kanwar Pal Singh, the appellant, impugns the order dated 22-7-2019 [Kanwar Pal Singh v. State of U.P., 2019 SCC OnLine All 5311] whereby the High Court of Judicature at Allahabad has dismissed his petition under Section 482 of the Code of Criminal Procedure, 1973 ("the Code" for short) for quashing criminal prosecution under Section 379 of the Penal Code, 1860 ("IPC" for short), Rules 3, 57 and 7 of the U.P. Minor Mineral (Concession) Rules, 1963, Sections 4 and 21 of the Mines and Minerals (Development and Regulation) Act, 1957 ("the MMDR Act, 1957" for short), and Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 arising out of Crime Case No. 289 of 2018, Police Station Vindhyachal, District Mirzapur, Uttar Pradesh. The appellant had also challenged, without success before the High Court, the order dated 8-2-2019 passed by the Chief Judicial Magistrate taking cognizance and summoning the appellant for trial."

9. In the case of *Kanwar Pal Singh (Supra)* challenge before the Hon'ble Apex Court was made on the strength of Section 22 of the Act of 1957, which can be deduced from the following paragraph of the report.

"3. Though a number of contentions were raised before the High Court, the learned Senior Counsel for the appellant has during the course of arguments before us restricted his submissions to the violation of Section 22 of the MMDR Act, 1957 and the legal effect thereof. Referring to the contents of FIR, it is submitted that the appellant has been wrongly charge-sheeted by the police for the offences, as at the best there was violation of Section 4, which is punishable under Section 21 of the MMDR Act, 1957. It is highlighted that M/s Kanwar Enterprises Pvt. Ltd. had held a valid lease for mining. As per Section 22, no court can take cognizance of the offences under the MMDR Act, 1957, except on a complaint in writing by a person authorised by the Central or State Government. The State Police not being authorised, could not have filed the charge-sheet/complaint. The contention predicated on Section 22 of the MMDR Act, 1957 is made by relying upon the judgment of this Court in Jeewan Kumar Raut v. CBI [Jeewan Kumar Raut v. CBI, (2009) 7 SCC 526 : (2009) 3 SCC (Cri) 475] ."

10. The Hon'ble Apex Court took note of Section 22 of the Act of 1957 and other relevant provisions viz. of Code of Criminal Procedure, Indian Penal Code, Uttar Pradesh Minor Mineral (Concession) Rules, 1963, the Act of 1957, Section 26 of General Clauses Act and Prevention of Damage to Public Property Act 1984 and thereafter concluded as under:

"4. In the written submissions filed by the appellant, a relatively new plea and contention has been raised by relying upon the judgments of this Court in *Belsund Sugar Co. Ltd. v. State of Bihar* [*Belsund Sugar Co. Ltd. v. State of Bihar*, (1999) 9 SCC 620] , *Sharat Babu Digumarti v. State (NCT of Delhi)* [*Sharat Babu Digumarti v. State (NCT of Delhi)*, (2017) 2 SCC 18 : (2017) 1 SCC (Cri) 628] and *Suresh Nanda v. CBI* [*Suresh Nanda v. CBI*, (2008) 3 SCC 674 : (2008) 2 SCC (Cri) 121] to urge that the MMDR Act, 1957 being a special statute, prosecution for an offence under Section 379 IPC would not be maintainable. The judgment of this Court in *State (NCT of Delhi) v. Sanjay* [*State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] , it is submitted, is distinguishable as FIR for the offence against illegal sand mining in *Sanjay* [*State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] was registered suo motu due to non-production of any document to establish mining rights and, therefore, the ratio in that case would apply only to cases of illegal mining where the mining lease had already been revoked or there was no subsisting mining lease.

5. We find the submission of the appellant to be untenable. In *Sanjay* [*State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] , a Division Bench of this Court had decided the appeals preferred against the conflicting judgments of the Delhi High Court [*Sanjay v. State*, 2009 SCC OnLine Del 525 : (2009) 109 DRJ 594] , Gujarat High Court [*Vishalbhai Rameshbhai Khurana v. State of Gujarat*, 2010 SCC OnLine Guj 13915 : (2010) 3 GCD 2160] , Kerala High Court [*Moosakoya v. State of Kerala*, 2007 SCC OnLine Ker 584 : (2008) 1 KLT 538] , Calcutta High Court [*Seema Sarkar v. State*, 1994 SCC OnLine Cal 277 : (1995) 1 Cal LT 95] , Madras High Court [*M. Palanisamy v. State of T.N.*, 2012 SCC OnLine Mad 2125 : (2012) 4 CTC 1] , [*Sengol v. State*, 2012 SCC OnLine Mad 82 : (2012) 2 CTC 369] and Jharkhand High Court on the question whether a person can be prosecuted for the offences under Sections 379/114 and other provisions of IPC on the allegations of illegal mining in view of Section 22 of the MMDR Act, 1957, which reads as under:

"22. Cognizance of offences.—No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government."

6. After advertng to the provisions of CrPC, namely, Sections 2(c), 2(d) and 2(h) which define "cognizable offence", "complaint" and "investigation" respectively, this Court in *Sanjay* [*State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] had referred to Section 4 CrPC, which reads as under:

"4. Trial of offences 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 or place of investigating, inquiring into, trying or otherwise dealing with such offences."

As per sub-section (2) of Section 4, all offences under any law, other than IPC, can be investigated, inquired into and tried under CrPC, subject to any enactment regulating the manner or place of investigation, trial, etc. of such offences.

7. Section 21 of the MMDR Act, 1957, it was observed in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] , states that the offences specified thereunder are cognizable. Section 41 CrPC was referred to elucidate that the police has the power to arrest without warrant in case of cognizable offences. Sections 149 to 152 of Chapter XI CrPC that require the police to prevent cognizable offences either by arrest or otherwise, etc. were referred to hold that the aforementioned provisions show that a police officer of his own authority has the duty to prevent any injury attempted to be committed to any public property or national assets and also to prosecute such persons in accordance with law.

8. Accordingly, in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] it was held that the investigation of the offences is within the domain of the police and the power of a police officer to investigate into cognizable offences is not ordinarily impinged by any fetters albeit the power must be exercised as per the statutory provisions and for legitimate purposes. The courts would interfere only when while examining the case they find that the police officer in exercise of the investigatory powers has breached the statutory provisions and put the personal liberty and/or the property of a citizen in jeopardy by an illegal and improper use of the powers or when the investigation by the police is not found to be bona fide or when the investigation is tainted with animosity. While examining the issue, this Court in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] took notice of the decision in H.N. Rishbud v. State of Delhi [H.N. Rishbud v. State of Delhi, AIR 1955 SC 196 : 1955 Cri LJ 526] wherein this Court has held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to the taking of the cognizance or trial. The cardinal principle of law as noted by this Court in Directorate of Enforcement v. Deepak Mahajan [Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440 : 1994 SCC (Cri) 785] is that every law is designed to further the ends of justice and should not be frustrated on mere technicalities. The public trust doctrine was cited and applied to underscore the principle that certain resources like air, sea, water, forests and minerals are of great importance to the people as a whole and that the Government is enjoined to hold such resources in trust for the benefit of the general public and to use them for their benefit than to serve private interests.

9. This Court in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] has cited several decisions wherein the challenge to the prosecution on the ground that there can be no multiplicity of offences under different enactments was resolved and

answered by relying upon Section 26 of the General Clauses Act, which we would like to reproduce for the sake of convenience:

"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."

Section 26 of the General Clauses Act permits prosecution for "different offences" but bars prosecution and punishment twice for the "same offence" under two or more enactments. The expression "same offence" has been interpreted by this Court in numerous decisions viz. *Maqbool Hussain v. State of Bombay* [*Maqbool Hussain v. State of Bombay*, (1953) 1 SCC 736 : AIR 1953 SC 325 : 1953 Cri LJ 1432] with reference to the provisions of the Sea Customs Act and the Foreign Exchange Regulation Act, 1947; *Om Parkash Gupta v. State of U.P.* [*Om Parkash Gupta v. State of U.P.*, AIR 1957 SC 458 : 1957 Cri LJ 575] and *State of M.P. v. Veereshwar Rao Agnihotri* [*State of M.P. v. Veereshwar Rao Agnihotri*, AIR 1957 SC 592 : 1957 Cri LJ 892] with reference to Section 409 IPC and Section 5(2) of the Prevention of Corruption Act; *T.S. Baliah v. CIT* [*T.S. Baliah v. CIT*, AIR 1969 SC 701] with reference to Section 52 of the Income Tax Act, 1922 and Section 177 IPC; *Collector of Customs v. Vasantraj Bhagwanji Bhatia* [*Collector of Customs v. Vasantraj Bhagwanji Bhatia*, (1988) 3 SCC 467 : 1988 SCC (Cri) 679] , with reference to the provisions of the Customs Act, 1962 and the provisions of the Gold (Control) Act, 1968; *State of Bihar v. Murad Ali Khan* [*State of Bihar v. Murad Ali Khan*, (1988) 4 SCC 655 : 1989 SCC (Cri) 27] with reference to the provisions of Sections 447, 429 and 379 IPC and the provisions of the Wildlife (Protection) Act, 1972; *Avtar Singh v. State of Punjab* [*Avtar Singh v. State of Punjab*, AIR 1965 SC 666 : (1965) 1 Cri LJ 605] with reference to Section 39 of the Electricity Act, 1910 and the provisions of theft under IPC and *ICAI v. Vimal Kumar Surana* [*ICAI v. Vimal Kumar Surana*, (2011) 1 SCC 534 : (2011) 1 SCC (Cri) 442] with reference to the provisions of the Chartered Accountants Act, 1949 and offences under Sections 419, 468, 471 and 472 IPC.

10. Elucidating on the provisions of Section 4 read with Sections 21 and 22 of the MMDR Act, 1957 and the offence under Section 379 IPC, it was observed in *Sanjay* [*State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] : (SCC pp. 811-12, paras 69-72)

"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. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. It also weakens riverbeds, fish breeding and destroys the natural

habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the groundwater levels.

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.

71. However, there may be a situation where a person without any lease or licence or any authority enters into river and extracts sand, gravel and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Penal Code.

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) CrPC."

(emphasis supplied)

11. As noticed above, in the written submissions the appellant has relied upon *Belsund Sugar Co. Ltd. [Belsund Sugar Co. Ltd. v. State of Bihar, (1999) 9 SCC 620]* , *Sharat Babu Digumarti [Sharat Babu Digumarti v. State (NCT of Delhi), (2017) 2 SCC 18 : (2017) 1 SCC (Cri) 628]* and *Suresh Nanda [Suresh Nanda v. CBI, (2008) 3 SCC 674 : (2008) 2 SCC (Cri) 121]* to contend that where there is a special Act dealing with a special subject, resort cannot be taken to a general Act. The said submission has no force in view of the ratio in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]* as quoted above which specifically refers to Section 26 of the General Clauses Act and states that the offence under Section 4 read with Section 21 of the MMDR Act, 1957 is different from the offence punishable under Section 379 IPC. Thus, they are two "different" and not the "same offence". It would be relevant to state here that the Delhi High Court in its decision in *Sanjay v. State [Sanjay v. State, 2009 SCC OnLine Del 525 : (2009) 109 DRJ 594]* , which was impugned in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]* , had accepted an identical argument to hold that once an offence is punishable under Section 21 of the MMDR Act, 1957, the offence would not be punishable under Section 379 IPC. This reasoning was rejected by this Court and the judgment of the Delhi High Court was reversed. The contention relying on the same reasoning before us, therefore, must be rejected.

12. We would also reject the contention raised by the appellant in the written submissions that the alleged theft of sand is not punishable under Section 379 read with Section 378 IPC as sand is an immovable property as per Section 3(26) of the General Clauses Act. In the present case, sand had been excavated and was thereupon no longer an immovable property. The sand on being excavated would lose its attachment to the earth, ergo, it is a movable property or goods capable of being stolen. (See Explanation 1 to Section 378 IPC and *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]* as quoted above.)

13. We would in the end refer to the judgment in *Jeewan Kumar Raut [Jeewan Kumar Raut v. CBI, (2009) 7 SCC 526 : (2009) 3 SCC (Cri) 475]* on which considerable reliance was placed by the appellant at the time of the hearing. The said judgment was distinguished in *ICAI [ICAI v. Vimal Kumar Surana, (2011) 1 SCC 534 : (2011) 1 SCC (Cri) 442]* by observing that the provisions of the Transplantation of Human Organs Act, 1994 ("the TOHO Act" for short) were different and were not similar to the provisions of sub-section (2) of Sections 24-A, 25 and 26 of the Chartered Accountants Act as the TOHO Act is hedged with a non obstante clause. We would like to further elucidate

and explain that in *Jeewan Kumar Raut* [*Jeewan Kumar Raut v. CBI*, (2009) 7 SCC 526 : (2009) 3 SCC (Cri) 475] this Court was examining the right of the appellant therein to claim statutory bail in terms of sub-section (2) of Section 167 CrPC on the ground that the Central Bureau of Investigation ("CBI" for short) had failed to file the charge-sheet within 90 days from the date of arrest. Relying on Section 22 of the TOHO Act, which mandates filing of a complaint by a person duly authorised by a competent authority, it was observed that the TOHO Act is a special law which deals with the subjects mentioned therein viz. offences relating to the removal of human organs, etc. Ordinarily, any person can set the criminal law into motion but the legislature keeping in view the sensitivity and importance of the subject had provided that the violations under the TOHO Act would be dealt with by the authorities specified therein. Thereafter, reference was made to Section 4 CrPC as cited above, to hold that the TOHO Act being a special Act, the matters relating to offences covered thereunder would be governed by the provisions of the said Act, which would prevail over the provisions of CrPC. Reference was made to clause (iv) of sub-section (3) of Section 13 of the TOHO Act which states that the appropriate authority shall investigate any complaint of breach of any of the provisions of the said Act or any rules made thereunder and take appropriate action. There is no similar provision under the MMDR Act, 1957 i.e. the Mines and Minerals (Development and Regulation) Act, 1957.

14. In *Jeewan Kumar Raut* case [*Jeewan Kumar Raut v. CBI*, (2009) 7 SCC 526 : (2009) 3 SCC (Cri) 475] , it was noted that CBI has been designated as an appropriate authority under the provisions of the TOHO Act and, therefore, entitled to carry on investigation. In this context, it was observed that Section 22 of the TOHO Act prohibits taking of cognizance except on a complaint made by an appropriate authority and, therefore, the police report filed by CBI was only a complaint petition made by an appropriate authority in terms of Section 22 of the TOHO Act. Consequently, sub-section (2) of Section 167 CrPC would not be attracted as CBI could not have submitted a police report in terms of sub-section (2) of Section 173 CrPC. *Jeewan Kumar Raut* [*Jeewan Kumar Raut v. CBI*, (2009) 7 SCC 526 : (2009) 3 SCC (Cri) 475] was, thus, dealing with a contention and issue entirely different from the one raised in the present case. It is undisputed that decisions of the courts cannot be blindly applied in disjunction of the factual circumstances and issues of each case. The court decisions expound on the law as applicable to the specific circumstances of each case and such exposition may not therefore be necessarily applicable to another case given its own peculiarities. Therefore, the contention predicated on the ratio in *Jeewan Kumar Raut* [*Jeewan Kumar Raut v. CBI*, (2009) 7 SCC 526 : (2009) 3 SCC (Cri) 475] holds no merit.

15. We would again advert to the decision in *Sanjay* [*State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] , which

had overruled the decision of the Calcutta High Court in *Seema Sarkar v. State* [*Seema Sarkar v. State*, 1994 SCC OnLine Cal 277 : (1995) 1 Cal LT 95] wherein the High Court held the proceedings to be invalid and illegal as the Magistrate had taken cognizance on the basis of a charge-sheet submitted by the police under Section 21(2) of the MMDR Act, 1957 and Section 379 IPC, observing that the cognizance was one that cannot be split or divided. The High Court had further observed that as the complaint was not made in terms of Section 22 of the MMDR Act, 1957, the cognizance was bad and contrary to law. We have already noted the decision of the Delhi High Court which had directed that FIR should not be treated as registered under Section 379 IPC but only under Section 21 of the MMDR Act, 1957. These decisions of the Calcutta High Court and the Delhi High Court were reversed and set aside by this Court in *Sanjay [State (NCT of Delhi) v. Sanjay]*, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437 after referring to Section 26 of the General Clauses Act and the meaning of the expression "same offence", to observe that the offence under Section 21 read with Section 4 of the MMDR Act, 1957 and Section 379 IPC are different and distinct. The aforesaid reasoning compels us to reject the contention of the appellant that the action as impugned in the FIR is a mere violation of Section 4 which is an offence cognizable only under Section 21 of the MMDR Act, 1957 and not under any other law. There is no bar on the court from taking cognizance of the offence under Section 379 IPC. We would also observe that the violation of Section 4 being a cognizable offence, the police could have always investigated the same, there being no bar under the MMDR Act, 1957, unlike Section 13(3)(iv) of the TOHO Act.

16. In view of the aforesaid discussion, we would uphold the order of the High Court refusing to set aside the prosecution and cognizance of the offence taken by the learned Magistrate under Section 379 IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. We would, however, clarify that prosecution and cognizance under Section 21 read with Section 4 of the MMDR Act, 1957 will not be valid and justified in the absence of the authorisation. Further, our observations in deciding and answering the legal issue before us should not be treated as findings on the factual allegations made in the complaint. The trial court would independently apply its mind to the factual allegations and decide the charge in accordance with law. In light of the aforesaid observations, the appeal is partly allowed, as we have upheld the prosecution and cognizance of the offence under Section 379 IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. There would be no order as to costs.

11. In para 16, quoted above, the Hon'ble Apex Court observed that prosecution and cognizance under Section 21 read with Section 4 of the Act of 1957 will not be valid and justified in the absence of the

authorization.

12. From the side-opposite, no judgment has been placed before this Court to controvert/dispute the law settled in the judgment(s), referred above.

13. In view of the aforesaid admitted and law settled on the issue, this Court finds force in the present application, accordingly, the same is *allowed*.

14. The entire proceedings of Criminal Case No.10187/2024 (State Versus Siraj Ahmad & Another) arising out of Case Crime No.198 of 2023, detailed above, pending before the Chief Judicial Magistrate, Lucknow are hereby quashed qua the applicants.

15. It is open for the authorities concerned to proceed against the applicants herein, if required, strictly in terms of the statutory provisions and settled law, referred above.

Order Date :- 4.9.2024/Mohit Singh/-