

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-15894 of 2013 (O&M)

Date of Decision: 13.10.2015

Mewa Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Mr. Mansur Ali, Advocate,
for petitioner.

Mr. A.S.Kler, DAG, Punjab.

SHEKHER DHAWAN, J

Present petition under Section 482 of the Code of Criminal Procedure for quashing of FIR No.30 dated 04.03.2013, under Section 379 of IPC and Section 4(1) of Mines Act, 1952, registered at Police Station Sohana, District S.A.S. Nagar, Mohali.

2. Learned counsel for the petitioner submitted that as per Section 22 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as 'the Act'), written complaint was to be filed by Mining Officer and FIR was not to be registered. So, the proceedings on the basis of FIR be quashed. On this point reliance is placed upon judgment of Hon'ble Supreme Court in case **Keshav Lal Thakur Vs. State of Bihar, 1996, 11 SC, 557.** Reliance are also placed upon judgment of Co-ordinate Bench of this Court in case **Rajeev Kumar Vs. State of Punjab 1997(4)**

CRCR (Criminal) 846 and Chandhan Singh Vs. State of Haryana 2004(1) RCR (Criminal) 724.

3. Learned State counsel submitted that the present case is under Section 4 (1) of 'the Act' as well as under Section 379 of the IPC because the accused person had taken away the articles which were taken in category of minor minerals. As the offences alleged against the accused person include offence under IPC also, FIR is to be registered and the same is maintainable and thus, the present petition be dismissed.

4. Having considered the submissions made by learned counsel for the parties and the fact that the offence alleged against the petitioner includes commission of offence of theft also, for which FIR under Section 379 IPC was registered. The facts of the case in hand are entirely distinguishable from the facts of above referred judgment of Hon'ble Supreme Court and judgments of co-ordinate Bench of this Court.

5. Identical matter was before Division Bench of Hon'ble Madras High Court in case **Sengol and others Vs. State Rep. By the Inspector of Police 2012 (CriLJ) 1705** where matter was reported to the police under Section 4(1) and (1a) of 'the Act' as well as Section 378 of IPC. Hon'ble Division Bench while interpreting provisions of Section 22 of 'the Act' observed that if the offence includes the offence of IPC, FIR is maintainable.

6. In such like cases if the act of an accused constitutes offences falling under two different enactments, there can be no difficulty in holding that prosecution can be launched under both the penal provisions. More so, the basic ingredients of offence punishable under Section (1) of Section 4 are totally different because by dishonestly taking any movable property out

of the possession of a person without his consent constitutes theft. Thus, it is undoubtedly clear that the ingredients of an offence of theft as defined in Section 378 of Indian Penal Code are totally different from the ingredients of an offence punishable under Section 21(1) read with Section 4(1) and 4(1A) of the Mines and Minerals Act.

7. Similar matter was before Hon'ble Supreme Court in case **Institute of Chartered Accountants Vs. Vimal Kumar Surana's 2011(1) SCC 534**, wherein the Hon'ble Supreme Court observed that there can well be a prosecution for an offence under Section 379 of IPC as well as under Section 21 of the Mines and Minerals Act simultaneously.

8. In view of the above, present petition being without any merit and the same is dismissed.

(SHEKHER DHAWAN)
JUDGE

October 13, 2015
msd