

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-18815 of 2014
Date of Decision : 28.4.2015

Jagjit Singh and othersPetitioners

Vs.

State of PunjabRespondent

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. P.S. Brar, Advocate for the petitioners.
Mr. D.S. Virk, AAG, Punjab.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Petitioners, by way of instant petition under Section 482 Cr.P.C., seek quashing of FIR No.97 dated 20.11.2012 under Section 379 IPC and Section 21 of Mines and Minerals Act, 1957 ('Act of 1957' for short) registered at Police Station Sadar, Faridkot.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 18.9.2014, has been filed on behalf of the State.

Learned counsel for the petitioners, while placing reliance on the judgement dated 10.11.2014 passed by this court in CRM No.19534 of 2014 (Jagjit Singh and others Vs. State of Punjab), submits that the impugned FIR is nothing, but a blatant misuse of process of law. Petitioners never indulged in any mining, because of which there was no scope of attracting the penal

provisions of Section 21 of the Act of 1957, nor the action of the petitioners would attract the provisions of Section 379 IPC. He submits that even as per the allegations levelled in the impugned FIR, petitioners were found digging pit in their own land for taking sand. He submits that even if petitioners were taking some earth from their own land, for personal use, they committed no sin muchless any offence either under the Act of 1957 or under the IPC. Learned counsel for the petitioners concluded by submitting that the present case was squarely covered by the judgement of this court in **Jagjit Singh's case (supra)** and even if the allegations levelled in the impugned FIR are taken to be true on their face value, no offence, whatsoever, is made out against the petitioners. He prays for allowing the present petition.

On the other hand, learned counsel for the State places reliance on a judgement of the Hon'ble Supreme Court in **State of NCT of Delhi Vs. Sanjay** 2014(4) RCR (Crl.) 211, to contend that the provisions of the Act of 1957 as well as the provisions of Section 379 IPC were attracted in the present case. He prays for dismissal of the petition.

Having heard learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this court is of the considered opinion that in view of the peculiar fact situation of the present case, impugned FIR and the proceedings arising therefrom are liable to be set aside, for the following more than one reasons.

So far as the judgement relied upon by learned counsel for the State in **Sanjay's case (supra)** is concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgement, it has not been found to be of any help to the respondent-State, being distinguishable on

facts. In para 2 of the judgement, the Hon'ble Supreme Court has recorded that the accused therein were found involved in illegal mining of sand from the Yamuna basin. This material difference in the fact situation makes the present case clearly distinguishable. It is the settled principle of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme court in **Padmausund Rao and another Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533.

Despite making his best efforts, learned counsel for the State could not distinguish the present case from **Jagjit singh's case (supra)**, relied upon by learned counsel for the petitioners, and rightly so because it was a matter of record. In fact, a bare reading of the judgement of this court in **Jagjit Singh's case (supra)** would make it clear that the present case is squarely covered.

The relevant observations made by this court in **Jagjit Singh's case (supra)**, which can be gainfully followed in the present case, read as under :-

It is argued by learned counsel for the petitioners that FIR for an offence under Section 21 of the Mines and Minerals (Regulation & Development) Act, 1957 could not be recorded as according to Section 22 of the Act, unless a complaint is filed by the competent authority cognizance of an offence under Section 21 of the Act cannot be taken. He also submits that in view of the fact that the offence is punishable under the Act, provisions of Section 379 IPC, could not be invoked by the prosecution. Learned counsel

relies upon Raman Kapila and another Vs. State of Punjab 2012 (4) RCR (Crl.) 634, Rakesh Kumar Vs. State of Haryana 2011(3) RCR (Crl.) 629 and Harmela Ram Vs. State of Haryana 2013 (3) RCR (Crl.) 141. It is further argued that offence punishable under Section 21 of the Act is non-cognizable and provisions of Section 22 of the Act having not been complied with, the FIR and consequent proceedings cannot be allowed to continue.

On the contrary, learned State counsel argues that the offence of Section 379 IPC, is an independent offence and that being so cognizance can be taken because the offence of Section 379 IPC, is a cognizable offence. According to him, in view of involvement of the offence of under Section 379 IPC, the FIR which, incidently, involves a non cognizable offence cannot be quashed.

FIR is based on the allegations that the petitioners were found to indulge in digging of sand unauthorizedly in spite of prohibition in the matter.

The FIR concludes that the petitioners have committed an offence punishable under Section 379 IPC, and Section 21 of the Act. Section 21 of the Act reads as under :-

“Whoever contravenes the provisions of sub-section (1) of sub-section (1A) of Section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty five thousand rupees or with both.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable (with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees) or with both and in the case of a continuing contravention, with an additional fine which may extend to (five hundred rupees) for every day during which such contravention continues after conviction for the first such contravention.

(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, use 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.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4) shall be liable

to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(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(2) of 1974), an offence under sub-section (1) shall be cognizable.”

It would be relevant to refer to Section 22 of the Act, which reads as under :-

“ 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.”

A perusal of Section 22 of the Act brings out that an offence punishable under Section 21 of the Act is a non-cognizable offence. To put it otherwise cognizance of an offence punishable under Section 21 of the Act can be taken

only on complaint in writing to be filed by the authorised person. To clarify further, an FIR cannot be recorded in respect of an offence punishable under Section 21 of the Act. In Harmela Ram Versus State of Haryana (supra), a similar situation arose and this court quashed the FIR and proceedings arising therefrom by observing that the offence being non-cognizable, FIR in the matter could not be recorded and continuance of the proceedings arising therefrom would be an abuse of process of law and the court. It has been contended on behalf of the respondent-State that offence of Section 379 IPC, being a cognizable offence, FIR has been rightly recorded even though another offence which happens to be non cognizable is involved. I regret my inability to subscribe to the view put forth on behalf of the respondent-State. It is not in dispute that offence of Section 379 IPC, is as simple as offence of theft and the theft of sand or other minerals is governed by the provisions of the Act, which is a special statute. The matter being regulated by a special statute, provisions of general law have to give way to the provisions of said Act. This was so held by this court in M/s Mahalakshmi Spinner Ltd. Vs. State of Haryana, 2007 (1) RCR (Civil) 381, Raman Kapila and another Vs. State of Punjab 2012(4) RCR (Crl.) 634 and Rakesh Kumar Vs. State of Haryana 2011(3) RCR (Crl.) 629. Nothing to the contrary has been shown during the course of hearing.

That being so, the offences of Section 379 IPC could

not be included in the First Information Report and allowing the proceedings under that provision, would, in disputably amount to an abuse to the process of law and the court and shall be vexations.

The consequence that follows is that the only offence that could be said to have been committed by the petitioners falls under Section 21 of the Act which would be a non-cognizable offence in terms of Section 22 of the Act and as such, the FIR recorded in the matter deserves to be quashed.

In the consequence, I accept the petition and quash the FIR No.9 dated 17.2.2013 recorded under Section 3790 IPC and Section 21 of Mines and Minerals (Regulation & Development) Act, 1957 (Annexure P-1) with all the proceedings emanating therefrom.”

Reverting back to the facts of the present case and respectfully following the law laid down by this court in **Jagjit Singh's case (supra)**, it is unhesitatingly held that continuation of the criminal proceedings against the petitioners, would amount to abuse of the process of law. Present one has been found to be a fit case for exercising the powers under Section 482 Cr.P.C., at the hands of this court, so as to prevent the abuse of the process of law and to secure the ends of justice.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the present petition deserves to be allowed. Consequently, impugned

FIR No.97 dated 20.11.2012 under Section 379 IPC and Section 21 of Act of 1957 registered at Police Station Sadar, Faridkot, as well as the proceedings arising therefrom are quashed. However, it is made clear that respondent-State shall be at liberty to initiate appropriate proceedings against the petitioners under the Act of 1957, in accordance with law, if so advised.

With the above said observations made, instant petition is allowed, however, with no order as to costs.

28.4.2015
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(RAMESHWAR SINGH MALIK)
JUDGE