

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

CRM-M No.29855 of 2014 (O&M)

Date of decision:19.03.2015

Pargat Singh

... Petitioner

Vs.

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Sarbjit Singh, Advocate for the petitioner.

Mr. Nikhil K. Chopra, DAG, Punjab.

.....

TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.90 dated 21.07.2014, under Section 379 IPC and Section 21 of Mines and Minerals Act, 1957, registered at Police Station Verowal, District Tarn Taran.

Counsel appearing for the petitioner would vehemently argue that the offence, if any, committed by the petitioner was under the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter to be referred to as 'the Act') and the Court could not take cognizance of an offence under the said Act unless a complaint in writing had been made by the authorized person in such behalf. It is argued that in the absence of such complaint by the authorized person, the impugned FIR cannot sustain .

Per contra, learned State counsel would submit that the FIR in question was registered on secret information that the petitioner is coming towards village Bhaljla on his Sawraj Tractor 735 with loaded sand and

without any valid authority and who had been signaled to stop and upon which, he stopped the tractor and ran towards fields. The petitioner was identified by ASI Balwinder Singh of PS Verowal, District Tarn Taran and he was released on bail on 19.08.2014 as per order dated 04.08.2014 passed by the learned Additional Sessions Judge, Tarn Taran. Counsel would submit that after completion of investigation, challan already stands presented in the Court of Illaqa Magistrate and as such, there would be no ground to quash the FIR.

Counsel for the parties have been heard.

Identical issue came up for consideration before a Coordinate Bench of this Court in ***Harmela Ram Vs. State of Haryana, 2013 (3) R.C.R. (Criminal) 141***, wherein upon examination of the relevant provisions of the 1957 Act, it was held in the following terms:

“4. Prosecution story, in brief, is that petitioners were indulging in illegal mining in the land belonging to Department of Mines and Geology. Hence, it was prayed that FIR be registered against the petitioners and their co-accused under Sections 379 and 188 IPC.

5. Thus, the allegations against the petitioners are that they were indulging in illegal mining. As per section 4 of the Act, no person shall undertake any mining operation in any area except under and in accordance with the terms and conditions of reconnaissance permit or of a prospecting license. Further no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of the Act.

6. As per Section 21 of the Act, whoever, contravenes the provisions of Sub Section 1 or Sub Section 1-A of Section 4 of the Act, shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to Rs.25,000/- or with both.

Section 22 of the Act reads as under:

“Cognizance of offence.

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.”

7. Thus, as per Section 22 of the Act, no Court shall take cognizance of any offence punishable under the Act except upon complaint in writing made by a person authorised in this behalf.

8. Since in the present case, the complaint should have been filed under the Act in writing by the authorised person, the FIR in question is liable to be quashed as the Court cannot take cognizance of the offence unless there is a complaint in writing by the authorised person with regard to commission of offence punishable under the Act. The authorised person instead of filing a complaint in writing sought registration of FIR against the petitioners and their co-accused, which could not have been done in view of Section 22 of the Act.

9. Accordingly, these petitions are allowed. FIR No.221 dated 20.07.2009 under Sections 379, 188 IPC registered at Police Station Mullana District Ambala (Annexure P-1) and all the subsequent proceedings arising therefrom are quashed.”

Adverting back to the pleadings on record in the present case, in para 6 of the petition, it has been specifically averred that no complaint in writing had been made by the authorized person with regard to commission of offence punishable under the 1957 Act. In the reply filed by the State on behalf of respondents No.1 to 3, it has simply was averred that FIR had been registered on secret information that the petitioner was coming towards village Bhaljla with loaded sand on his tractor.

This Court is of the considered view that the issue raised in the

instant petition would be squarely covered in favour of the petitioner in the light of judgment rendered in ***Harmela Ram's case (supra)***.

Accordingly, the instant petition is allowed. FIR No.90 dated 21.07.2014, under Section 379 IPC and Section 21 of Mines and Minerals Act, 1957, registered at Police Station Verowal, District Tarn Taran and all subsequent proceedings emanating therefrom are quashed.

However, it would be open for the authorized person to initiate proceedings, if so advised against the present petitioner under the Act, if there be violation of any provisions of the Act.

Petition allowed in the aforesaid terms.

19.03.2015

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**