

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No. 3002 of 2014

Date of decision : February 16, 2015

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Satnam Singh and others

.....Petitioners

Versus

State of Punjab

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. P.K Gupta, Advocate for the petitioners.

Mr. D.S Virk, AAG, Punjab.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

The petitioners are seeking quashing of the FIR No.90 dated 8.5.2013 registered under Section 379 IPC read with Section 21 of The Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act') at Police Station Sadar Jagraon, District Ludhiana and subsequent proceedings on the said basis.

Aforesaid FIR (Annexure P-6) was registered on the complaint of the General Manger cum Mining Officer Ludhiana who had moved an application dated 2.5.2013 with the SHO, Police Station Sadar Jagraon for stoppage of illegal excavation of sand. On

18.4.2013, the checking of the areas at Sidhwan Bet was conducted by the team of their office for stoppage of illegal excavation of land. It was seen at the spot that along the road from Village Patti Multani to Village Sherewal sand has been dumped. As the same was illegal, it was requested that the investigation of the above said villages be got conducted and necessary action may be taken against the accused persons. Upon which, the SHO Sadar Jagraon marked the same to Incharge Police Post Giddarwindi to take necessary action after investigation. Accordingly, the then Incharge PP Giddarwindi reached the spot and inquired the matter secretly and openly and it was found that Gurmeet Singh and Kulwant Singh both sons of Karnail Singh Residents of Kakkar Patti Tihada have dumped a lot of sand on their land which was situated at Sherewal Road. It was found that Surjit Singh, Malkiat Singh both sons of Chakar Singh Caste Rai Sikh residents of Parjiyan, Biharipur, Tehsil Jagraon, District Ludhiana in connivance with their brother in law Satnam Singh son of Sihna Singh resident of Sherewal has dumped the land by picking the same from the land in possession of Satnam Singh which is situated at the river bed and is owned by the government. As a consequence thereof, the instant case FIR No. 90 (supra) was registered.

At the outset, counsel for the petitioner has referred to a judgment passed by the Coordinate Bench of this Court in **Harmela Ram vs. State of Haryana 2013(3) RCR (Criminal) 141**, whereby the FIR registered under Sections 379, 188 IPC was quashed on the

ground that under Section 22 of the Act, there is a bar to take cognizance of the offence punishable under this Act any rules made thereunder except upon **complaint in writing** made by a person authorized in this behalf by the Central Government or the State Government.

Counsel for the State has not been able to controvert the contentions of the counsel for the petitioner.

Sections 21 and 22 of the Act are reproduced herein as under:

21. Penalties.—[\(1\)](#) Whoever contravenes the provisions of sub-section (1) or 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, 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.

(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.]

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 authorized in this behalf by the Central Government or the State Government.*

A perusal of the above two Sections makes it clear that no Court can take cognizance of of any offence punishable under the Act except upon **complaint in writing** made by a person authorized in this behalf.

In the present case, the complaint should have been filed under the Act in writing by the authorized 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 authorized person with regard to commission of offence punishable under the Act. Hence, registration of FIR would amount to an abuse of the process of Court in view of Section 22 of the Act.

Accordingly, this petition is allowed. FIR No.90 dated 8.5.2013 registered under Section 379 IPC read with Section 21 of the Act at Police Station Sadar Jagraon, District Ludhiana (Annexure P-6) and all the subsequent proceedings arising therefrom are quashed.

However, the authorized person would be at liberty to initiate proceedings against the petitioners under the Act, if there is any violation of any provision of the said Act.

Petition allowed.

February 16, 2015
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(**RITU BAHRI**)
JUDGE