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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 47 of 2016**

1. Ghanshyam Agrawal S/o Late Ramswaroop Agrawal, aged about 60 years, R/o Ambikapur Road, Pathalgaon, P.O. P.S. & Tehsil - Pathalgaon, Revenue & Civil District Jashpur, Chhattisgarh
2. Naveen Agrawal S/o Ghanshyam Agrawal, aged about 37 years, R/o Ambikapur Road Pathalgaon, P.O. P.S. & Tehsil - Pathalgaon, Revenue & Civil District – Jashpur, Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh through Secretary, Department of Home (Police), Mahanadi Bhawan, Naya Raipur, Revenue & Civil District – Raipur, Chhattisgarh
2. Director General of Police, Raipur, Revenue & Civil District – Raipur, Chhattisgarh
3. Mining Officer, Mines Office in Collectorate, Raigarh, Revenue & Civil District – Raigarh, Chhattisgarh
4. Superintendent of Police, Raigarh, Revenue & Civil District – Raigarh, Chhattisgarh
5. Collector, Raigarh, Revenue & Civil District – Raigarh, Chhattisgarh
6. State of Chhattisgarh through Station House Officer, Police Station - Dharamjaigarh, Revenue & Civil District – Raigarh, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Surfaraj Khan, Advocate
For Respondents/State	:	Shri B. Gopa Kumar, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****26.07.2016**

The challenge in the present petition under Section 482 Cr.P.C. is the registration of Criminal Case No.1312/2015 and the FIR lodged at Police Station, Dharamjaigarh in Crime No.158/15 for the offence under Section 379 of IPC and Section 4 (1) (21) of the Mines & Minerals (Development and Regulation) Act, 1957 (for

short “ the MMDR Act”).

2. Counsel for the petitioners submits that the two orders firstly lodging of the FIR and subsequently the registration of the complaint before the JMFC as Criminal Case No. 1312/15 are not sustainable for the reason that there is total contradiction of the provisions of the MMDR Act and the rules framed under the Chhattisgarh Minor Mineral Rules, 1996 (for short “the Rules of 1996”). Counsel for the petitioners assails the impugned orders firstly on the ground that the officer who had lodged the FIR was not a competent authority as is required under the provisions of the MMDR Act. The second ground raised by the counsel for the petitioners is that the Rules of 1996 specifically prescribe the procedure and the Authority who can file a written complaint before the Court below on the basis of which cognizance would be taken which again has not been followed in the instant case and therefore, there is a clear violation of these two provisions of law and the registration of the case therefore is *per se* illegal.

3. For ready reference it would be relevant to reproduce Section 22 of the MMDR Act which reads as under:

“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.”

4. A plain reading of the said Act reflects that no cognizance would be taken except a complaint made in writing by the person authorized by the Central Govt. or the State Government. In the instant case no such exercise has been made neither does it clearly show whether the person who had lodged the complaint was

a duly authorised person as per the Act or not.

5. Likewise Rule 53 of Chhattisgarh Minor Mineral Rules, 1996 reads as under:

53. Penalty for un-authorised extraction and transportation.

(1) Whenever any person is found extracting or transporting minerals or on whose behalf such extraction or transportation is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal extraction of minerals and every such person shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.

(2) Whenever any person is found extracting or transporting mineral in contravention of the provisions of these rules the Collector/Additional Collector/Joint Director/Deputy Director/Mining Officer/Assistant Mining Officer, or any Officer authorised by him or Zila/Janpad/Gram Panchayat may seize the minor minerals and its products together with all tools, equipments and vehicles used in committing such offence.

(3) to (7)

(8) The authorities empowered to take action under this rule may if deem necessary, request to the police authority in writing for the help of police and the police authorities shall render such assistance as may be necessary to enable the officer to exercise the powers conferred on them by this rule to stop illegal extraction and transportation of minerals.

(9) (i) Subject to such conditions as may be specified, the Collector/Additional Collector may authorize either generally or in respect of particular case or class of cases any officer not below the rank of Assistant Mining Officer to investigate all or any offence punishable under this rule.

(ii) Every officer so authorised shall in conduct of such investigation exercise the powers conferred upon the officer-in-charge of a police station by the Code of Criminal Procedure for the investigation of a cognizable offence.

(iii) The investigation officer for the purposes of this rule shall exercise the powers of the Code of Civil Procedure in respect of the following matters:

(a) Enforcing the attendance of any person and examining him on oath or affirmation.

(b) Completing production of documents.

6. A plain reading of the above referred provision of the Rules of 1996 more particularly sub Rule 8 & 9 would show as to the fact that it is only the specific Authority who has been envisaged under

the Rule competent to lodge a report in writing if at all if the authorities want they have to take the assistance of the Police and only thereafter a complaint could have been lodged which again is missing from the facts of the present case.

7. This Court while admitting the petition granted time to the respondent/State to file reply to the specific averments made by the petitioners so far as the competency of the authorized officer is concerned. But unfortunately when the reply was filed by the State, the fact as to the competency of the authorized officer who has filed the complaint has not been dealt by the State. Subsequently, the State was directed to file an additional reply but the State has shown its reluctance to file an additional reply. The State counsel has simply relied on the scope of interference of this Court while exercising the powers under Section 482 CrPC.

8. A bare perusal of the pleadings submitted by the authority concerned very explicitly shows that Section 22 of the MMDR Act and Rule 53 of the Rules, 1996 prescribes that there has to be a written complaint first lodged by the competent authority under the Rules of 1996. Subsequently, it is the competent authority alone who can file a written report before the competent Court of law for taking cognizance at the time of the complaint.

9. In the instant case, in the absence of any cogent material to establish the fulfillment under Section 22 of the MMDR Act as well as Rule 53 of the Rules of 1996, this Court is of the opinion that prima facie the petitioners have been able to establish their case that the complaint itself has been lodged by a person who is incompetent under the Act and again by a person who has not been duly authorized by the law.

10. Accordingly, the present Cr.M.P is allowed. The entire proceedings initiated by the respondents in Criminal Case No.1312/2015 pending before the CJM, Raigar including the FIR registered at Police Station Dharamjaigarh, District Raigarh in Crime No. 158/15 stand quashed.

**Sd/-
P. Sam Koshy
Judge**