

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1079 OF 2014

1. Dnyaneshwar s/o Khandu Khandagale
Age: 34 years, Occu: Agril.,
R/o. Yesgaon, Taluka Khultabad,
District : Aurangabad.
2. Sachin s/o Dattu Devkar,
Age : 30 years, Occu: Agril.,
R/o. Vadod [Kahnoba],
Taluka Khultabad,
Dist. Aurangabad.

APPLICANTS

VERSUS

1. The State of Maharashtra
Through Police Station Khultabad,
Dist. Aurangabad.
2. Shivaji s/o. Motiram Chape
Age 49 years, Occu: Service,
Police Constable B.No.115,
Police Station, Khultabad,
District : Aurangabad

RESPONDENTS

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Mr.G.D.Kale, Advocate for the applicants
Mr.S.N.Late, Advocate for respondent no.2
Mr.S.Y.Mahajan, Addl.P.P. for Respondent –
State

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Date: 28.11.2016

PER COURT:

1. This Criminal Application is filed under Section 482 of the Criminal Procedure Code, praying therein for quashing the First Information Report dated 01.01.2014, registered at Police Station Khultabad, District Aurangabad, vide Crime No.I-02/2014, for the offences under Section 379 of the Indian Penal Code and Sections 21 (1) (2) (3) (4) and (5) of the Mines and Minerals Act.

2. The learned counsel appearing for the applicants invites our attention to the contents of the FIR and submits that even if the allegations in the FIR are taken on its face value and read in its entirety, the ingredients of the alleged offences are not attracted. He further submits that in fact the Police Officer is not competent to lodge the FIR under the provisions of the Mines and Minerals [Development and Regulation] Act,

1957 [for short 'the said Act']. The Mines and Minerals [Development and Regulation] Act is a self-contained Code and Section 22 of the said Act provides for procedure for taking cognizance of the offence. He further submits that the competent authority granted permission on 01.01.2014 for extracting minerals. He further submits that even the Talathi has prepared panchanama. He invites our attention to the judgment of the Bench presided over by the learned Single Judge in the case of Shaikh Yunus s/o. Shaikh Chand and another Vs. State of Maharashtra in Criminal Application No. 5348/2012 decided on 13th December, 2013 and submits that, as contemplated under Section 22 of the said Act only the competent authority under the said Act can take cognizance and file complaint before the Court.

3. The learned APP appearing for the respondent — State relying upon the

investigation paper submits that the time of the alleged offence is at 6.30 a.m. on 01.01.2014. The permission obtained by the applicants to excavate mud is during the office hours on 01.01.2014. However, as per the allegations in the FIR, the alleged offence was committed at 6.30 a.m. on the said date. It is transpired during the investigation that, the Gat number mentioned in the letter issued by the Tahsildar permitting the applicants to excavate mud, addressed to the applicants makes mention of Gat No.77. However, the minerals are extracted from some other land.

4. The learned counsel appearing for respondent no.2 submits that the allegations in the FIR needs further investigation of the offence under the provisions of the said Act and also under Section 379 of the Indian Penal Code, the offences are disclosed.

5. We have given careful consideration to the submissions of the learned counsel appearing for the parties. With their able assistance, perused the contents of the FIR and also other documents placed on record. We do not wish to comment upon the documents placed on record by the applicants since the investigation is in progress. It appears, *prima facie*, that the permission granted to the applicants to excavate the mud is on 01.01.2014 during the working hours of tahsil office. However, in the FIR time of alleged offence is mentioned at 6.30 a.m. on 01.01.2014. There is also considerable force in the argument of the learned APP appearing for the respondent – State that, the permission was granted to excavate the mud from the land situate in Gat No.70, but the land from which actually mud is extracted by the applicants is different.

6. The decision relied upon by the

learned counsel appearing for the applicants in the case of *Shaikh Yunus Shaikh Chand [cited supra]*, cannot be made applicable in the facts of the present case inasmuch as the investigation in the present case is in progress. However, in the cited case already charge-sheet was filed and the case was pending before the Court of competent jurisdiction. There are allegations of theft in the FIR, which would attract the ingredients of Section 379 of the IPC. Therefore, we do not see any reason to interfere in the investigation. We are of the *prima facie* opinion that, the ingredients of the alleged offences have been attracted, and therefore, the FIR needs further investigation. Hence the Application stands rejected.

7. However, we make it clear that rejection of an application may not be construed as an impediment to the applicants,

in case they wish to avail remedy of taking exception to the charge-sheet in event of filing of the same by the Investigation Officer, or to avail remedy of filing of application for discharge before the court of competent jurisdiction.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE