IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NOS.569 AND 691 OF 2016

Pramod s/o Jagannath Khojare, Mahesh Nagar, Police Linetakli, Dist. Nagpur.
-vs-
State of Maharashtra, Thr. PSO, PS Koradi, Nagpur.

WITH

CRIMINAL APPLICATION (APL) NO.668 OF 2016

Sanjay s/o Bhagatprasad Verma, Khaparkheda, Saoner, Dist. Nagpur.
-vs-
State of Maharashtra, Thr. PSO, PS Koradi, Nagpur.

WITH

CRIMINAL APPLICATION (APL) NO.680 OF 2016

Mohd. Latif s/o Hafiz Ansari and anr. Walani Mines, Khaparkheda, Saoner, Dist. Nagpur.
-vs-
State of Maharashtra, Thr. PSO, PS Koradi, Nagpur.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Shri N. R. Tekade, Advocate for applicant in APL 569/16 and 691/16.
Shri V. A. Thakare, Addl. PP for respondent/State.

CORAM : B. P. DHARMADHIKARI & KUM. INDIRA JAIN, JJ.
DATE : December 01, 2016

1. All these matters were listed before the Court yesterday and were called out. At that time adjournment was sought on the ground that Advocate Shri N. R. Tekade was unwell. The adjournment was

opposed by learned Addl. Public Prosecutor who pointed out that Investigating Officer was present since morning and provisions of MCOC Act are also involved. It was pointed out that in some matters taking of coercive steps was not permitted by the Court. We therefore adjourned the matters to today.

2. Today Advocate Shri N. R. Tekade is present and adjournment is sought by pointing out that Advocate Shri R. K. Tiwari is unwell. Learned Addl. Public Prosecutor has invited our attention to the developments noted supra.

3. We reject the request of adjournment.

4. We have heard Advocate Shri Tekade. He has relied upon judgment of learned Single Judge of this Court dated 13/12/2013 in Criminal Application No.5348 of 2012 (***Shaikh Yunus s/o Shaikh Chand and anr. vs. State of Maharashtra***) where charge-sheet was also under provisions of Mines and Minerals (Development and Regulation) Act, 1957 as also under Section 379 IPC. The charge-sheet in so far as offence under provisions of Mines and Minerals Act was concerned, was found to be not presented by the

authorized officer. In so far as Section 379 IPC is concerned, in paragraph 12 the learned Judge has found that when there was special enactment, general provisions of IPC will not apply.

5. Learned Addl. Public Prosecutor opposed the contentions. According to him here offences are only under Section 379 IPC and no provision of Mines and Minerals Act, 1957 has been invoked. It is further pointed out that in three matters provisions of MCOC Act are also invoked.

6. The consideration by the learned Single Judge of general provisions and special provisions qua IPC and Mines and Minerals Act, 1957 cannot be said to be proper and laying down good law. This Court has recently taken a view to the contrary in judgment dated 27/10/2016 in Cri.W.P. No.110/2003 (***Pandurang Tukaram Thakare vs. State of Maharashtra and ors.***)

7. Judgment of Hon'ble Apex Court in ***Vishal Agrawal v. Chhattisgarh SEB (2014) 3 SCC 696*** shows that in case of special statutes also, if there is offence under IPC, police has the power to investigate.

8. Advocate Shri Tekade however submitted that the

applicant cannot be said to have committed any offence under Section 379 IPC as he has been given on lease the concerned sand ghat. Hence, excess excavation of sand or excess sand in a motor vehicle cannot mean that there is a theft.

9. Learned Addl. Public Prosecutor pointed out that truck of the applicant in APL No.691/2016 was actually weighed and was found carrying 2 Br of sand in excess that too without paying royalty.

10. We find, in present situation, no case is made out warranting intervention in extraordinary jurisdiction. Keeping all rival contentions open, applications are dismissed with no order as to costs.

JUDGE **JUDGE**

Asmita