

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43556 of 2014
Date of Decision: 21.08.2017

Savinder @ Gurna

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Malik, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

SURINDER GUPTA, J.

This is a petition filed by Savinder @ Gurna son of Heera Singh seeking quashing of FIR No. 290 dated 25.08.2014, registered for offences punishable under Sections 379 and 188 of Indian Penal Code (for short 'IPC'); 4 (1) and 4 (1-A) of Mines and Minerals (Development and Regulation) Act, 1957 (for short 'Mines Act'), at Police Station Murthal, District Sonapat.

2. FIR was registered on the complaint of Mines Officer, Mining-cum-Mineral Department, Sonapat, wherein he has stated that during checking by the team of Mines and Minerals Department, it was found that on left side of the road leading from Murthal to Mukimpur, sand had been mined after removing upper layer of earth from a field, which belongs to Savinder @ Gurna son of Heera Singh, despite total ban on mining of sand. Mining of sand had taken place with his consent during night hours for the last two days. While some sand was removed remaining was lying at the spot. On measurement, site from where the sand was removed, it was found

to be 150 ft. X 75 ft. and 7-8 ft. deep.

3. Learned counsel for the petitioner while referring to provisions of Section 22 of 'Mines Act', has argued that no Court can take cognizance of any offence punishable under the 'Mines Act' or any rules made therein except upon the complaint in writing by a person authorized in this behalf by the Central Government or State Government. He submits that Section 22 of 'Mines Act' bars registration of FIR by the police on the complaint by the authorized person of Mines and Minerals Department and the Court is also barred from taking cognizance. In support of his arguments, he has relied on two Single Bench judgments of this Court in cases of ***Harmela Ram vs. State of Haryana, 2013 (3) RCR (Criminal) 141*** and ***CRM-M-19534 of 2014 (Jagjit Singh and others vs. State of Punjab)*** decided on 10.11.2014, wherein reliance was placed on observations in case of ***Harmela Ram (supra)***.

4. Learned State counsel has argued that Section 22 of 'Mines Act' nowhere bars registration of FIR on the complaint of a person authorized in this behalf by Central or State Government. The word 'complaint' does not mean that complaint to Court only but it includes the complaint made to police or any other authority competent to take action in this regard. The offence under the provisions of 'Mines Act' are cognizable and under Section 154 of Code of Criminal Procedure (for short 'Cr.P.C.'), the police is competent to register an FIR and investigate the case on receipt of complaint by an authorized person.

5. Questions which arise for consideration in this petition are formulated as follows:-

(i) Whether the word 'complaint' used in Section 22 of

'Mines Act' confines to complaint made directly to Court?

- (ii) Whether the police on receipt of complaint by authorized person as per Section 22 of 'Mines Act' is competent to register an FIR and investigate the case?
- (iii) Whether the Court can take cognizance on final report submitted by the police under Section 173 Cr.P.C. on the basis of FIR registered on the complaint of authorized person?
- (iv) Whether the complaint made to police on the basis of which FIR was registered and final report was presented, which has been made part of final report, can also be deemed as a complaint, which finds reference in Section 22 of 'Mines Act'?

6. Sub-Section (4) of Section 21 of the 'Mines Act' defines the offence, which is punishable under Section 21 of the 'Mines Act', as follows:-

- (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.”

7. The contravention of above provisions is punishable under Section 21 (1) of the 'Mines Act', which provide as follows:-

“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.

8. An offence under Section 21 (1) is cognizable offence as per the provisions of Section 21 (6) of the 'Mines Act', which provides as follows:-

“Notwithstanding anything contained in the Code of Criminal Procedure, 1973 an offence under Sub-Section (1) shall be cognizable.”

9. It is here that Section 154 Cr.P.C. come to play, which reads as follows:-

“154. Information in cognizable cases - (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall

be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

xx xx xx xx xx

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

10. On the question as to whether the police on receipt of complaint disclosing commission of cognizable offence can register FIR, Hon'ble Apex Court in case of **State of Haryana vs. Ch. Bhajan Lal**, (1992) Supp 1 SCC 335 observed in para 34 of the judgment as follows:-

“34. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154 (1) of the Code, the said police officer has no other option except to enter the substance thereof in

the prescribed form, that is to say, to register a case on the basis of such information.”

11. Apex Court in case of **Prakash Singh Badal and another vs. State of Punjab and others, 2007 (1) SCC 1** has also recorded observations to similar effect.

12. In case of **Lalita Kumari vs. Government of U.P. and others, 2013 (4) RCR (Criminal) 979**, a large Bench of Hon'ble Apex Court dealt with mandatory nature of provisions of Section 154 Cr.P.C. and observed in paras 39 and 40 as follows:-

“39. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154 (1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154 (1) of the Code have to be given their literal meaning.

“Shall”

40. *The use of the word shall in Section 154(1) of the Code*

clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence.”

13. Hon'ble Apex Court observed that an overall reading of codes makes it clear that condition, which is *sine qua non* for recording a first information report (FIR), is that there must be an information and that information must disclose the cognizable offence.

14. From the law as laid down and settled by the Apex Court, it is evident and clear that the police on receipt of complaint disclosing commission of cognizable offence has to record an FIR, investigate the matter and submit final report.

15. Now comes the question as to whether Court can take cognizance of offence committed as per the provisions of Section 21 of the 'Mines Act' on receipt of police report under Section 173 (8) Cr.P.C.?

16. Section 22 of the 'Mines Act' provides as follows:-

“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.”*

17. The police after investigation, if files a final report, making out a case punishable under Section 21 of the 'Mines Act' and complaint made to police is also attached with that challan, it is sufficient compliance of provisions of Section 22 of the 'Mines Act'. The police is an intervening agency, which acts as per provisions of Section 154 Cr.P.C. Moreover, Section 22 of the 'Mines Act' though provides that Court shall not take

cognizance of an offence except upon a complaint in writing made by a person authorized in this behalf by Central Government or State Government but it nowhere provides that complaint should be made to Court. A complaint for commission of offence can also be made to police particularly when the offence is cognizable. Court at the time of taking cognizance of offence under the 'Mines Act' can see as to whether law has been set in motion by authority competent under Section 22 of the 'Mines Act'. This fact can be ascertained from complaint made to police, which usually form part of final report submitted by police. Competence of person making complaint is an issue of fact to be determined on the basis of evidence.

18. Learned counsel for the petitioner has relied on judgments by Single Bench of this Court in cases of ***Harmela Ram (supra)*** and ***Jagjit Singh (supra)***. In both the cases, while observing that Court is not competent to take cognizance for offence except on the complaint in writing by a person authorized in this behalf, provisions of Section 154 Cr.P.C. and observations of Apex Court in cases of ***Ch. Bhajan Lal (supra)***, ***Prakash Singh Badal (supra)*** and ***Lalita Kumari (supra)*** referred above, were neither noted nor discussed. A similar matter had come up before me in case of ***Jaspal Sharma and another vs. State of Punjab, CRM-M-16495-2013*** decided on 30.01.2014, wherein also observations in case of ***Harmela Ram (supra)*** were taken note of and it was observed as follows:-

“The above discussion leads to the conclusion that the offence under Section 21 of 'the Act' is cognizable and therefore, the police could register a case and investigate. It is also well settled that in an occurrence, if part of the incident

constitute offence which are non-cognizable in nature, the police is required to register a case in respect of the entire occurrence and to investigate the same as per the provisions of Section 155 (4) Cr.P.C. The police by registering FIR in question for the commission of cognizable offence has committed no illegality. The bar of taking cognizance, as contained in Section 22 of 'the Act' and 195 Cr.P.C., no more exist after the filing of the complaint by the authorized persons along with the challan.....”

19. The other citation referred by learned counsel for the petitioner in case of **Jagjit Singh (supra)** is of no help to petitioner as observations made in this case are also based on the observations in case of **Harmela Ram (supra)**.

20. As a sequel of my above discussion, I am of the considered opinion that the word 'complaint' used in Section 22 of the 'Mines Act' does not refer to complaint made only to Court but it also includes the complaint by authorized person in this behalf made to police on the basis of which the police has presented final report under Section 173 (8) Cr.P.C. The police is also competent to register an FIR and investigate the case on receipt of a complaint by authorized person as per provisions of Section 22 of the 'Mines Act', if a cognizable offence is disclosed.

21. In view of above observations, the consequent conclusion that can be safely derived is that the Court can take cognizance on final report submitted by the police under Section 173 Cr.P.C., on the basis of FIR registered on a complaint of a person authorized in this behalf by Central or State Government as the case may be.

22. As a sequel of my above discussion, I find no merit in this petition and the same is dismissed.

August 21, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No