

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-11852-2016

Date of Decision:30.08.2018

Sukhjinder Singh Pannu and others

... Petitioners

Vs.

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. G.S. Punia, Sr. Advocate with
Ms. Harleen Kaur, Advocate
for the petitioner.

Mr. Nikhil K. Chopra, Addl. A.G. Punjab.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has prayed for the following relief:

“Petition under Section 482 Cr.P.C for quashing of FIR No.90 dated 17.08.2013 (Annexure P-1), P.S. Ghagga, under Section 379 IPC and 21 of Mines and minerals (Development and Regulation) Act, 1957, report under Section 173 Cr.P.C (Annexure P-2) and all other proceedings thereon including order framing charge dated 12.05.2014 (Annexure P-3).”

2. Learned counsel for the petitioner submitted that petitioner No.1 is stated to be lease holder of the land situated in the revenue estate of village Kalwanoo, Tehsil Patran measuring 4 Kanal 0 Marla, Khasra No.46//3min (4-0). He entered into a lease agreement with land owner Darbara Singh on 19.7.2013 for the purpose of extracting of sand as per the permit issued by the State Government on 6.8.2013. Respondent-Mines Department on their surprise visit to the site relating to sand mining found that extraction of sand was not in accordance with the permit to the extent that digging of earth upto four feet. Whereas as land was digged about 20 feet. In this regard, official of the respondent-department lodged an FIR

No.90 dated 17.08.2013, P.S. Ghagga, under Section 379 IPC and 21 of

Mines and minerals (Development and Regulation) Act, 1957 (for short “the Mines Act”).

3. Learned counsel for the petitioners in support of challenge to FIR and consequential proceedings raised a legal question relating to lodging of FIR and its maintainability in view of Section 21 read with Section 22 of the Mines Act. Further he relied on decisions of this Court passed in CRM-M-526-2012; Harmela Ram v. State of Haryana; decided on 29.4.2013 and CRR No.3850 of 2013; Labh Singh and others v. State of Punjab; decided on 18.05.2015 (Annexure P-7 and Annexure P-8). He also relied on the decision of the Supreme Court rendered in the case of State (NCT of Delhi) v. Sanjay; (2014) 9 SCC 772 (See; Paras 70 and 71). It was also contended that observations of the Supreme Court in the aforementioned decision in relation to the river/riverbed where illegal sand mining is taken place, in that event, police action could be taken. Whereas in the present case, petitioner No.1 is lease holder of the land. Therefore, observation made by the Supreme Court in para-73 of the said judgment is not attracted in the present case.

4. Per contra, learned counsel for the respondent-State submitted that Supreme Court in the case of Sanjay (supra) in paras 60 to 69 read with para 73 held that police action is permissible. Therefore, there is no infirmity in lodging of FIR. Thus, petitioners have not made out a case so as to interfere with the FIR in question.

5. Heard learned counsel for the parties.

6. Crux of the matter in the present case is whether Mining Department can lodge FIR in respect of illegal land mining in a private land or not?. It is necessary to peruse Sections 21 and 22 of the Mines Act which

reads as under:

“21. Penalties.-(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of Section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

(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 two years or with fine which may extend to five lakh rupees or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand 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.”*

7. There is a specific provision which is bound by the official of the department of Mines for taking any action under Mines Act read with Rules. When statute specifically empowers the competent authority to take action in respect of making complaint against illegal mining, in that event, competent authority is required to do according to the statute. Official cannot deviate from the statute which provides for making complaint. Undisputedly in the present case, an FIR has been registered which is contrary to Section 22 of the Mines Act which provides for making complaint. It is undisputed that petitioner No.1 is lease holder of the land where the alleged allegations relating to illegal mining. In that event, respondent-department have remedy of invoking Section 22 and violating the permit which has been granted to the petitioner on 6.8.2013. That apart observation made by the Supreme Court in the case of Sanjay (supra) is relating to river/riverbed. If illegal mining has taken place, in that event, police can take necessary action. Thus, the present case is distinguishable in respect of whether it is river or riverbed having regard to the fact that illegal activities relating to extracting of sand in the petitioners's land would not

fall under the river or riverbed. Therefore, observation made by the Supreme Court in para 73 in Sanjay's case (supra) is not attracted.

8. In view of the above facts and circumstances, FIR No.90 dated 17.08.2013, P.S. Ghagga, under Section 379 IPC and 21 of Mines and minerals (Development and Regulation) Act, 1957 and all consequential proceedings arising therefrom are hereby set aside. Reserving liberty to the respondents to take necessary action in respect of any violation relating to Mining permit dated 6.8.2013.

9. Petition stands allowed accordingly.

30.08.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**