

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17708 of 2016

DATE OF DECISION: NOVEMBER 30, 2018

NACHATTAR SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. G.S. PUNIA, SR. ADVOCATE
WITH MR. P.S. PUNIA, ADVOCATE
FOR THE PETITIONER.

MR. NIKHIL CHOPRA, ADDL.A.G. PUNJAB.

MANOJ BAJAJ, J.

The petitioner has brought this petition under Section 482 Cr.P.C. for quashing of FIR No.84 dated 30.10.2012 under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'Mines Act') alongwith Section 188 IPC and the final report under Section 173 Cr.P.C., based upon the FIR.

The brief facts leading to the petition are that on the basis of a complaint given by Hardev Singh, Functioning Manager-cum-Mining Officer of District Udyog and Mining Centre, Patiala, a case was registered against Nachhatar Singh son of Lal Singh (petitioner) and others. As per the case of the prosecution, upon checking of illegal mining on 30.12.2012, it was found Nachattar Singh son of Lal Singh was doing illegal mining from his land. The mining was done by Sukhjinder Singh resident of Ghagga with the help of a machine. Based on this FIR, final report was also prepared

under Section 173 Cr.P.C. on 14.5.2013. Challan was filed against petitioner Nachattar Singh and Rupinder Singh @ Banti son of Gurtej Singh.

Learned senior counsel on behalf of the petitioner has contended that the offence as alleged under Section 21 of the Mines Act contemplates mode of cognizance which is contained in Section 22 of the Mines Act. It is submitted that in view of the provisions of Section 22 of the Mines Act, police has no power to take cognizance of the offence under the Mines Act and therefore, the FIR deserves to be quashed.

Section 22 of the Mines Act 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.”

A bare reading of the above would indicate that the statute itself has given a clear mode of cognizance and that too alone on the basis of complaint in writing to be made by a person authorized in this behalf by the Centre Government or the State Government. Merely, because the complaint has been given by the Officer to the police, the cognizance by the Police is against the provisions of the Act.

In response to the petition, reply has been filed by the State on behalf of respondent No.1 indicating that after the registration of the FIR and submission of final report against petitioner Nachattar Singh and

Rupinder Singh @ Banti, charges have been framed on 11.7.2013. However, the ground for quashing of the FIR based on Section 22 of the Mines Act in the petition has not been answered effectively. The corresponding paragraph 4 of the reply simply describes the contents of para 4 of the petition as a matter of record.

In the facts and circumstances of the case, the Court has proceeded to take cognizance on the basis of the report submitted under Section 173 Cr.P.C. whereas, it could have been only on the basis of a complaint by a competent officer. Being so, even if the charges have been framed, the same has no bearing on the merits of this petition as it involves purely a question of law, i.e. the authority of the police to take cognizance of the offence under the Mines Act.

Learned counsel has further relied upon few decisions of this Court wherein such issues have been dealt with, at Annexures P-4 and P-5.

In view of the above, the FIR is without jurisdiction and therefore, the proceedings before the Court are also without jurisdiction. Resultantly, the petition is allowed and the impugned FIR No.84 dated 30.10.2012 under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 as well as the proceedings arisen out of it are quashed. However, the complainant shall be at liberty to adopt appropriate remedy in accordance with law to prosecute the petitioner.

November 30, 2018
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No
Whether Speaking/Reasoned : Yes/No