

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2267 of 2018

Arising Out of PS. Case No.-25 Year-2018 Thana- MANPUR District- Nalanda

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M/s. Mahadev Enclave Pvt. Ltd., a registered company having its registered office at B- 37, Ayodhya Marg, P.S.- Hanuman Nagar, District- Jaipur, Rajasthan, through its Director Namely, Kartik Rathi S/o Shri Ajay Rathi, R/o 3-B 22 23 Sukhadia Nagar, P.S. and District- Sri Ganganagar Rajasthan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-commissioner, Home Department, Govt. of Bihar, Patna
2. The Principal Secretary-cum-Commissioner, Department of Mines and Geology, Bihar, Patna.
3. The Mines Inspector, Nalanda.
4. The Superintendent of Police, Nalanda
5. The Officer-in- Charge, Manpur Police Station, Nalanda.

... .. Respondent/s

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with

Criminal Writ Jurisdiction Case No. 2288 of 2018

Arising Out of PS. Case No.-14 Year-2018 Thana- SARE District- Nalanda

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M/s. Mahadev Enclave Pvt. Ltd., a registered company having its registered office at B- 37, Ayodhya Marg, P.S.- Hanuman Nagar, District- Jaipur, Rajasthan, through its Director Namely, Kartik Rathi S/o Shri Ajay Rathi, R/o 3-B 22 23 Sukhadia Nagar, P.S. and District- Sri Ganga Nagar, Rajasthan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-commissioner, Home Department, Govt. of Bihar, Patna
2. The Principal Secretary Cum Commissioner, Department of Mines and Geology, Bihar Patna.
3. The Assistant Director, Mines, Nalanda



4. The Superintendent of Police Nalanda.
5. The Officer In Charge, Sare Police Station , Nalanda.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 2282 of 2018

Arising Out of PS. Case No.-31 Year-2018 Thana- ASHTHAWAN District- Nalanda

M/s. Mahadev Enclave Pvt. Ltd., a registered company having its registered office at B- 37, Ayodhya Marg, P.S.- Hanuman Nagar, District- Jaipur, Rajasthan, through its Director Namely, Kartik Rathi S/o Shri Ajay Rathi, R/o 3-B 22 23 Sukhadia Nagar, P.S. and District- Sri Ganga Nagar, Rajasthan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-commissioner, Home Department, Govt. of Bihar, Patna
2. The Principal Secretary-cum-Commissioner, Department of Mines and Geology, Bihar, Patna.
3. The Mines Inspector, Nalanda.
4. The Superintendent of Police, Nalanda.
5. The Officer in Charge, Asthawan Police Station, Nalanda.

... .. Respondent/s

Appearance :

In all the Cases

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Advocate
	:	Mr. Rahul, Advocate
	:	Alok Kumar Jha, Advocate
For the State	:	Mr.Gyan Prakash Ojha, GA-7
	:	Mr. Gopal Krishna, AC to GA-7
For the Department of Mines	:	Ms. Kalpana, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 27-02-2019



Heard Mr. Gautam Kumar Kejriwal, learned counsel for the petitioner, Mr. Gyan Prakash Ojha, learned counsel for the State and Ms. Kalpana, learned counsel for the Department of Mines.

2. The petitioner is a company incorporated under the Indian Companies Act.

3. The respondent Department of Mines and Geology, Government of Bihar vide notification dated 2887 dated 22.07.2014 expressed its decision to invite tenders for settlement of sand ghats located in different districts of the State of Bihar for the period 2015-2019, which included the sand ghats in Nalanda district as well. The petitioner participated in the tender and having made highest bid in the auction was declared successful bidder for settlement of sand ghats of Nalanda district for the period 01.01.2015 to 31.12.2019. A mining lease deed was executed in Form 'O' by the respondent Department of Mines and Geology for the year 2015-2016 and 2017-2018. A team consisting of some officers from the district inspected the mining sites settled in favour of the petitioner. In view of the irregularities found in course of inspection, on the basis of written reports submitted by one Reyazul Haque, Inspector of Mines, three first information reports (for short



‘FIRs’), vide Manpur P.S. Case No.25 of 2018, Asthawan P.S. Case No.31 of 2018 and Sare P.S. Case No.14 of 2018 were registered against the petitioner on 21.02.2018 under Section 15 of the Environment (Protection) Act, 1986 (for short ‘1986 Act’) and the Rule 40 of the Bihar Minor Mineral Concession Rules, 1972 (for short ‘1972 rules’)

4. Cr.W.J.C No. 2267 of 2018 has been filed by the petitioner for quashing the FIR of Manpur P.S. Case No. 25 of 2018, Cr.W.J.C No. 2288 of 2018 has been filed by the petitioner for quashing the FIR of Sare P.S. Case No.14 of 2018 and Cr.W.J.C No. 2282 of 2018 has been filed by the petitioner for quashing the FIR of Asthawan P.S. Case No.31 of 2018.

5. Since the petitioner and the respondents are common in all the cases and the essential facts and law involved are also identical, the writ petitions have been heard together and are being disposed of by a common order.

6. In Manpur P.S. Case No.25 of 2018, it has been alleged by the informant in his written report that in course of inspection of site of Tetrama sand ghat conducted by the inspecting team on 20.02.2018, it was noticed that mining activities were being carried out in violation of conditions of mining plan and environment clearance.



7. In Sare P.S. Case No.14 of 2018, the informant has alleged that in course of inspection of site of Maulanabigha sand ghat conducted by the inspecting team on 21.02.2018 it was found that the mining activities were being carried out in violation of conditions of mining plan and environment clearance.

8. In Asthawan P.S. Case No.31 of 2018, the informant has alleged that in course of inspection of site of Jier sand ghat conducted by the inspecting team on 21.02.2018 it was found that the mining activities were being carried out in violation of conditions of mining plan and environment clearance.

9. Thus, basically the allegation in all the FIRs is that the petitioner being settlee of the aforesaid sand ghats was carrying on mining activities in violation of conditions of mining plan and environment clearance.

10. Mr. Gautam Kumar Kejriwal, learned counsel for the petitioner has contended that in view of Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short MMDR Act, 1957) since cognizance can be taken by a competent authority only on a private complaint preferred by a person authorized by the Central/State



Government, the provision of the Code of Criminal Procedure (for short 'Cr.P.C.') stands excluded and, therefore, an FIR cannot be registered by the police. According to him, there is no provision under the MMDR Act, 1957 or the 1972 rules conferring any power upon the police authority to investigate any case.

11. Mr. Kejriwal has submitted that similarly Section 19 of the 1986 Act requires filing of a complaint by the Central Government or any authority or officer authorized in this behalf by that Government or any person, who has given notice of not less than sixty days. He argued that since no complaint, as required under law has been filed, the police have no jurisdiction to investigate the case instituted under the 1986 Act.

12. Advancing his arguments, Mr. Kejriwal, submitted that allowing the investigation to continue in the aforesaid FIRs would be nothing but an abuse of process of the court. In view of the law laid down by the Supreme Court in the case of **State of Haryana & Ors. vs Bhajanlal and Ors.** since reported in **1992 supp (1) SCC 335**, this court, in exercise of its powers conferred under Article 226 of the Constitution of India ought to quash the FIRs in question.



13. *Per contra*, learned counsel for the respondent State has submitted that the informant is a competent authority to institute a criminal case against the petitioner. He has pleaded that sub-section (6) of Section 21 of the MMDR Act, 1957 gives overriding effect over some contrary provisions. It stipulates that notwithstanding anything contained in the Cr.P.C, an offence under sub-section(1) of Section 4 shall be cognizable. He pleaded that in case of a cognizable offence, the police have statutory power to investigate the case. Hence, institution of the FIRs against the petitioner is neither illegal nor bad in law.

14. He has urged that as per agreement entered into between the petitioner and the officer authorised in the Mining Department, the petitioner was duty bound to seek environmental clearance and strictly follow the same. However, during the inspection made by the inspecting team of the sand ghats, in question, violations of environmental laws as also the mining plans were detected. Thus, rightly, the FIRs have been instituted and investigations are being carried out.

15. Ms. Kalpana, learned counsel for the Mining Department has also supported the contentions advanced on behalf of the State. She has submitted that in view of



irregularities found by the officers of the Mining Department, during inspection, direction was given to the Inspector of Mines to institute FIRs pursuant to which the FIRs were instituted. She has contended that once the police would complete investigation, the report submitted in the court under Section 173 of the CrPC would be treated as complaint. Thereafter, the question of taking cognizance would arise. She pleaded that no fault can be found with the action of the police in institution of the FIRs as the same is not barred in law.

16. Having heard learned counsel for the parties, first of all, I find it just and proper to refer to the relevant provisions of the MMDR Act, 1957.

17. Section 4 of the said Act, which puts a restriction on prospecting or mining operations by any person except under the lease or licence, reads thus:

“4. Prospecting or mining operations to be under licence or lease.—(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-



section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013), and any such entity that may be notified for this purpose by the Central Government:

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union territory of Goa, Daman and Diu.

(1-A) No person shall transport or store or cause to be transported or stored any



mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(2) No reconnaissance permit, prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rule made under section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease.”

18. Section 21 of the said Act, which is a penal provision in case of contravention of the provisions of sub-section (1) or sub-section (1-A) of Section 4, reads thus:

“21. Penalties.- (1) Whoever contravenes the provisions of sub-section (1) or sub-section (1-A) 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 things, 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.”

(emphasis mine)

19. Section 22 of the said Act, which bars taking cognizance of any offence punishable under the Act or rules made thereunder except upon a written complaint made by a person authorized in this behalf by the Central Government or the State Government, reads thus:



“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 authorised in this behalf by the Central Government or the State Government.”

(emphasis mine)

20. Section 15 of the said Act, which confers power upon the State Government to make rules in respect of minor minerals, reads thus:

“15. Power of State Governments to make rules in respect of minor minerals.-

(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

(1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be



paid therefor;

(b) the time within which, and the form in which, acknowledgment of the receipt of any such applications may be sent;

(c) the matters which may be considered where applications in respect of the same land are received within the same day;

(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;

(f) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and



the manner in which these shall be payable;

(h) the manner in which rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;

(i) the manner in which rehabilitation of flora and other vegetation such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;

(j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concession may be transferred;

(k) the construction, maintenance and use of roads power transmission lines, tramways, railways, aerial rope ways, pipelines and the making of passage for water for mining purposes on any land



comprised in a quarry or mining lease or other mineral concession;

(l) the form of registers to be maintained under this Act;

(m) the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;

(n) the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefore, and the powers of the revisional authority; and

(o) any other matter which is to be, or may be, prescribed.

(2) Until rules are made under subsection (1), any rules made by a state Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of these Act shall continue in force.



(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:

Provided that the State Government shall not enhance the rate of royalty or dead rent in respect of any minor mineral for more than once during any period of three years.

(4) Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely:-

(a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining under sub-



section(2) of section 9-B;

(b) the composition and functions of the District Mineral Foundation under sub-section (3) of section 9-B; and

(c) the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under section 15A.”

21. In exercise of powers conferred under Section 15 of the MMDR Act, 1957, vide notification dated 22.06.1972, the State Government enacted 1972 rules. It would also be relevant to refer to the relevant 1972 rules for convenience.

22. Rule 40 of the said rules provides penalty for unauthorized extraction and removal of minor minerals. It reads thus:

“40. Penalty for unauthorised extraction and removal of minor minerals. - (1)
Whoever is found to be extracting or removing minor minerals or on whose behalf such extraction or removal is being made he be an agent, a manager, an employee or a contractor or a sub-lessee, otherwise than in



accordance with these Rules, shall be presumed to be party to the illegal removal of the minor mineral and every such person shall be punishable with simple imprisonment which may extend to six months or with fine, which may extend to rupees five thousand or with both.

(2) Whenever any person is found extracting or removing or transporting minor minerals in contravention of the provisions of these Rules, the Competent Officer or Deputy Director (Mines) or Additional Director (Mines) or Director of Mines may seize the minor minerals together with all tools and equipments used in committing such offence.

(3) The Competent Officer or Deputy Director (Mines) or Additional Director (Mines) or Director of Mines who has seized the minor minerals or the tools and equipments under sub-rule (2), may release the same on the execution by the claimant thereof of a bond for the production of the property so released, if and when so required before the Court having jurisdiction to try the offence on account of which the seizure has been made.

(4) The Competent Officer or Deputy Director (Mines) or Additional Director (Mines) or Director of Mines may, without orders from a Magistrate, and without a



warrant, arrest any person who is found extracting or removing or transporting minor minerals in contravention of these Rules.

(5) The Competent Officer or Deputy Director (Mines) or Additional Director (Mines) or Director of Mines making an arrest under sub-rule (4) of these Rules shall within 24 hours of the arrest, take or send the person arrested before the Magistrate having jurisdiction in the case along with a complaint in writing regarding the offence committed by the person.

(6) The Competent Officer or Deputy Director (Mines) or Additional Director (Mines) or Director of Mines may release the person arrested on his executing a bond to appear before the Magistrate having jurisdiction in the case if and when so required.

(7) If any driver of any carrier while carrying minor minerals fails to furnish the transporting Challan in Form in the prescribed format or refuses inspection of such Challan by the Competent Officer or Director of Mines or Additional Director of Mines or Deputy Director of Mines or Director (Mines) or Collector or Commissioner or any officer authorised by the Collector, he shall be punishable with simple imprisonment which may extend to



six months or with fine which may extend to one thousand rupees or with both.

(8) Whoever removes minor mineral without valid lease/permit or on whose behalf such removal is made otherwise than in accordance with these Rules he be an agent, Manager, contractor or a sub-lessee, shall be presumed to be a party to the illegal removal of the minor mineral and shall be liable to pay the price thereof and the Government may also recover from such person rent, royalty or taxes as the case may be, for the period during which the land was occupied by such person without any lawful authority without prejudice to other action being taken against him under these Rules or any other law for the time being in Force.

(9) Notwithstanding anything contained in Rule 40 (8) hereinbefore whosoever, under the terms of an agreement other than an agreement under these Rules at any time has received or receives cost of minor mineral/material including royalty under the terms of the said agreement shall deposit that royalty which is included in such cost of mineral/material in the manner prescribed in Rule 43 hereinafter, within seven days from the date of receipt of such cost of mineral/material.

Any royalty received as such by such



person before the commencement of this Rule shall be deposited by him within fifteen days from the date of commencement of this Rule :

Provided that if a sum equal to the royalty included in the cost of mineral/material so received has already been paid or deposited prior to receipt of cost of the mineral/material including royalty by him he shall not be required to deposit the royalty said above:

Provided further that any royalty payable under this Rule, if not paid when due be recovered with interest @ 15 per cent per annum as an arrear sum of public demand.

(10) To prevent evasion of royalty it is provided that works contractor shall purchase the minerals from lessee/permit holder and authorised dealers only and no Works Department shall receive the bill which the works contractors submit to recover cost etc. of mineral used by them in completion of the works of the Works Department under any agreement from the works contractor if the said bill is not accompanied by an affidavit in Form 'M' with particulars in Form 'No' of these Rules along with a photo copy of the said affidavit and particulars. It shall be the duty of the officer who receives or on whose behalf the said bill is received to send the photo copy of the Affidavit and particulars to



the District Mining Officer/Assistant Mining Officer within whose jurisdiction the mineral was allegedly purchased, for verification.

If contents of the said affidavit on verification by the concerned District Mining Officer/Assistant Mining Officer is found to be false either wholly or partly it shall be presumed that the concerned mineral was obtained by illegal mining and in that event the said District Mining Officer/Assistant Mining Officer shall take action as prescribed in these Rules against the maker of the said affidavit:

Provided that if the Works Contractor deposits or pays the royalty in respect of the mineral so consumed/supplied by him as shown in the aforesaid affidavit and particulars the said District Mining Officer/Assistant Mining Officer in his discretion may not take action as prescribed in this Rule.

Explanation. - For the purposes of this Rule-

- (i) "Works Department" means departments of the Central or State Government including Company, Corporation, Undertakings, Autonomous body of the Government engaging Works Contractors for any kind of construction on its behalf.



(ii) "Works Contractor" means an individual, a firm, a company, an association or body of individuals who under an agreement, with the Works Department work for the said Department."

23. Rule 41 of the said rules, which provides for cognizance in respect of any offence punishable under the rules, reads thus:

"41. Offence cognizable upon written complaints. - No Court inferior to that of a Magistrate of the First Class shall try any offence punishable under these rules and no Court shall take cognizance of any offence under these rules, except upon a complaint made in writing by the Competent Officer or Deputy Director of Mines or Additional Director of Mines or Director of Mines or any other Officer empowered by the Government."

(emphasis mine)

24. Thus, it would be manifest that under Section 4(1) of the MMDR Act, 1957, no person is permitted to undertake mining operation in any area except under the terms and conditions of a reconnaissance permit or of a prospecting



licence or of a mining lease. Similarly, Section 4(1-A) of the MMDR Act, 1957 puts a restriction on transportation or storage of any mineral otherwise than in accordance with the provisions of the Act and the rules made thereunder. It prohibits a person from mining operation without valid lease or licence.

25. As far as the cases in hand are concerned, it is an admitted fact that the petitioner is a settlee. Its mining activities were being conducted under valid lease. Unless a person is charged for contravening the provisions of sub-section (1) or (1-A) of Section 4 of the MMDR Act, 1957, he cannot be prosecuted for any cognizable offence under the MMDR Act, 1957.

26. Sub-section (6) inserted in Section 21 of the MMDR Act by amendment making an offence under sub-section (1) cognizable notwithstanding anything contained in the Cr.P.C., 1973 would be of no consequence in case of the petitioner because there is no allegation that he was carrying mining activities without a valid lease.

27. Moreover, it would be manifest from Section 22 of the MMDR Act, 1957 that there is an express bar on the court to take cognizance of any offence punishable under the said Act or any rule made thereunder except upon a



complaint in writing made by a person authorized in that behalf by the Central Government or the State Government.

28. Thus, even if the sub-section (6) of Section 21 of the MMDR Act, 1957 makes an offence committed under sub-section (1) cognizable, cognizance of the offence cannot be taken on a police report submitted under Section 173(2) Cr.P.C.

29. Furthermore, Rule 41 of 1972 rules enacted by the State Government, in exercise of powers conferred by Section 15 of the MMDR Act, 1957 puts a restriction on the court from taking cognizance of any offence punishable for violation of any rules except upon a complaint made by a person authorized in that behalf.

30. Thus, neither under the MMDR Act, 1957 nor under the 1972 rules cognizance of any offence committed under the said Act or Rules can be taken on the basis of a “police report” under Section 173 (2) of the Cr.P.C.

31. At this stage, it would also be apposite to reproduce Sections 15 and 19 of 1986 Act hereunder:

“15. Penalty for contravention of the provisions of the Act and the rules, orders and directions.-

(1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions



issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

19. Cognizance of offences- No court shall take cognizance of any offence under this Act except on a complaint made by-

- (a) the Central Government or any authority or officer authorized in this behalf by that Government;
- (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central



Government or the authority or
officer authorised as aforesaid.”

(emphasis mine)

32. There is, admittedly, no such complaint made by public servant, as is warranted by Section 19 of the 1986 Act against the petitioner.

33. In view of the restrictions imposed on the court to take cognizance of any offence except upon a complaint made by the Central Government or any authority or officer authorized or any person who has given notice of not less than sixty days under Section 19 of 1986 Act, institution of the FIRs, in question, under Section 15 of 1986 Act, is patently bad in law.

34. Considering the provisions of the Acts and the rules noted hereinabove, I have no doubt in my mind that in any case where mining activities were being carried out in violation of the mining plan or environmental laws, the prosecution could have been launched only by way of filing complaint in accordance with law and not otherwise. In a case instituted before the police under Section 154 of the Cr.P.C., a Magistrate cannot take cognizance of the offence.

35. Since the MMDR Act, 1957 and the rules made



thereunder as also the 1986 Act are special statutes, in view of sub- section (2) of Section 4 of the Cr.P.C., there cannot be any manner of doubt whatsoever that the provisions prescribed under the special statute shall prevail over the provisions of the Cr.P.C..

36. It is well settled position in law that if a special statute lays down the procedure, the procedure laid down under the general statute shall not be followed.

37. As Section 22 of the MMDR Act, Rule 41 of 1972 rules and Section 19 of 1986 Act expressly prohibit taking cognizance except upon a complaint in writing made by a person authorized in this behalf even though Section 21(6) of the MMDR Act, 1957 makes an offence committed under sub-section (1) of Section 21 cognizable, no FIR can be instituted.

38. There is no merit in submission that on completion of investigation, the report submitted by the police before the court can be treated to be a “complaint”.

39. The word “complaint” has been defined in Section 2(d) of the Cr.P.C. as under:

“2(d). “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or



unknown, has committed an offence, but does not include a police report.

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.”

40. From the aforesaid definition of “complaint”, it is manifest that a “police report” cannot be treated as a “complaint”. The expression “police report” has been defined under Cr.P.C. as a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173 Cr.P.C.

41. Section 173(2) of the Cr.P.C. mandates that as soon as investigation conducted by the police is completed, the officer incharge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a “police report”, a report in the form prescribed by the State Government. Since a “complaint” does not include “police report”, the filing of “police report” pursuant to completion of investigation into the FIRs, in question, would be an exercise in futility.



42. Since institution of the FIRs against the petitioner is in clear contravention of the statutory provision discussed, hereinabove, allowing investigation to be conducted by the police would be nothing but an abuse of process of law.

43. Hence, it is deemed expedient in the interest of justice, in view of the ratio laid down by the Supreme Court in **State of Haryana vs Bhajan Lal** (Supra) to quash the prosecution of the petitioner in the aforesaid cases. Accordingly, the FIRs of Manpur P.S. Case No.25 of 2018, Sare P.S. Case No.14 of 2018 and Asthawan P.S. Case No.31 of 2018 and the investigations conducted by the police therein are, hereby, set aside.

44. The writ petitions stand allowed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.03.2019
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