IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.540 of 2019

Arising Out of PS. Case No.-2 Year-2018 Thana- SIGAUDI District- Patna

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Mithilesh Kumar Singh Son of Late Gauri Singh, Resident of Gauri Kutir, Anugarah Nagar, Dhansar, P.S-Dhansar, District-Dhanbad (Jharkhand),Director of Board Son Commodities Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chowk, P.S-Koilwar, District-Ara (Bhojpur).

... ... Petitioner

Versus

1. The State Of Bihar, Through Principal Secretary, Home Govt. Of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Home, Govt. of Bihar, Old Secretariat, Patna
3. The Director General of Police, Bihar, Old Secretariat, Patna
4. The Superintendent of Police, Patna.
5. The Officer in Charge, Sigaudi Police Station, Patna
6. The Principal Secretary, Mines and Geology Deptt., Govt. of Bihar,Vikas Bhawan, Bailey Road, Patna.
7. The Assistant Director, Mines and Geology Deptt., Govt. of Bihar, Vikas Bhawan, Bailey Road,Patna
8. The District Magistrate cum Collector, Patna.
9. The Mines Inspector, District Mines Office, Patna.

... ... Respondents

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with

Criminal Writ Jurisdiction Case No. 676 of 2019

Arising Out of PS. Case No.-2 Year-2018 Thana- BHAGWANGANJ District- Patna

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Mithilesh Kumar Singh Son of Late Gauri Singh Resident of Village - Gauri Kutir, Anugarah Nagar, Dhansar, P.S- Dhansar, Distt.- Dhanbad, (Jharkhand), Director of Broad Son Commodities Pvt. Ltd. a Company Incorporated Under the Provisions of the Companies Act, 1956, Having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Cowk, P.S.- Koilwar, Distt.- Ara (Bhojpur).

... ... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Home Govt. Of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Home, Govt. of Bihar, Old Secretariat, Patna.

3. The Director General of Police, Bihar, Old Secretariat, Patna.
4. The Superintendent of Police, Patna.
5. The Officer In Charge, Bhagwanganj Police Station, Patna.
6. The Principal Secretary, Mines and Geology Department, Govt. of Bihar, Vikas Bhawan, Bailey Rd. Patna.
7. The Assistant Director, Mines and Geology Department , Govt. of Bihar, Vikas Bhawan, Bailey Rd. Patna, Bihar
8. The District Magistrate Cum Collector, Patna Bihar
9. The Mines Inspector, District Mines Office, Patna. Bihar

... ... Respondents

with

Criminal Writ Jurisdiction Case No. 693 of 2019

Arising Out of PS. Case No.-7 Year-2018 Thana- DHANARUA District- Patna

Mithilesh Kumar Singh Son of Late Gauri Singh Resident of Gauri Kutir, Anugarah Nagar, Dhansar, P.S.- Dhansar, District - Dhanbad, (Jharkhand), Director of Broad Son Commodities Pvt Ltd, a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Cowk, P.S.- Koilwar, District - Ara (Bhojpur)

... ... Petitioner

Versus

1. The State Of Bihar, Through Principal Secretary, Home Govt. Of Bihar, Old Secretariat, Patna Bihar
2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna
3. The Director General of Police, Bihar, Old Secretariat, Patna Bihar
4. The Superintendent of Police, Patna Bihar
5. The Officer in Charge, Dhanarua Police Station, Patna Bihar
6. The Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan Bailey Road, Patna
7. The Assistant Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan Bailey Road, Patna
8. The District Magistrate Cum Collector, Patna Bihar
9. The Mines Inspector, District Mines Office, Patna Bihar

... ... Respondents

with

Criminal Writ Jurisdiction Case No. 718 of 2019

Arising Out of PS. Case No.-7 Year-2018 Thana- NAUBATPUR District- Patna

Mithilesh Kumar Singh Son of Late Gauri Singh, Resident of Gauri Kutir, Anugarah Nagar, Dhansar, P.S.-Dhansar, District-Dhanbad (Jharkhand), Director of Board Son Commodities Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Cowk, P.S.-Koilwar, Distt.-Ara (Bhojpur).

... ... Petitioner

Versus

1. The State Of Bihar, Through Principal Secretary, Home Govt. Of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Home, Govt. of Bihar, Old Secretariat, Patna.
3. The Director General of Police, Bihar, Old Secretariat, Patna.
4. The Superintendent of Police, Patna
5. The Officer In Charge, Naubatpur Police Station,Patna
6. The Principal Secretary, Mines and Geology Deptt., Govt. of Bihar, Vikas Bhawan, Bailey Road,Patna.
7. The Assistant Director, Mines and Geology Deptt., Govt. of Bihar, Vikas Bhawan, Bailey Road, Patna.
8. The District Magistrate cum Collector, Patna.
9. The Mines Inspector, District Mines Office, Patna

... ... Respondents

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Appearance :

(In all cases)

For the Petitioner/s	:	Mr. S.B. Upadhyay, Sr. Adv.
		Mr.Suraj Samdarshi, Adv.
For the State	:	Mr.Gyan Prakash Ojha, Adv.
		Mr. Abhishek Singh, A.C. to G.A.-7
For Respondent Nos. 8 & 9	:	Mr. Naresh Dikshit, Adv.
		Ms Kalpana, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date : 26-08-2019

Heard Mr. S.B. Upadhyay, learned senior advocate assisted by Mr. Suraj Samdarshi, learned advocate for the petitioner, Mr. Gyan Prakash Ojha, learned advocate for the State and Ms Kalpana, learned advocate for the respondent nos. 8 and 9.

2. This order shall dispose of Cr.W.J.C. Nos. 540 of 2019, 676 of 2019, 693 of 2019 and 718 of 2019.

3. The aforementioned cases involve more or less identical facts and questions of law.

4. In all the writ petitions, parties are common except respondent no.5, who is Officer-in-charge of different police stations.

5. The petitioner is one of the Directors of Broad Son Commodities Pvt. Limited, a company incorporated under the provisions of the Companies Act, 1956. He has been made accused in Sigaudi P.S. Case No. 02 of 2018, Bhagwanganj P.S. Case No. 02 of 2018, Dhanarua P.S. Case No. 07 of 2018 and Naubatpur P.S. Case No. 07 of 2018.

6. The first information report (for short 'FIR) of the aforesaid four police cases have been registered under Sections 420, 406, 379 read with 34 of the Indian Penal Code (for short 'IPC'), Section 21 of the Mines and Minerals (Development & Regulation) Act, 1957 (for short 'MMDR Act'), Rules 40, 21 and 22 of the Bihar Minor Minerals Concession Rules, 1972 (for short '1972 Rules') and Section 15 of the Environment (Protection) Act, 1986 (for short '1986 Act').

7. Since essential facts of all the cases are identical, the facts are being extracted from Cr.W.J.C. No. 540 of 2019.

8. In Cr.W.J.C. No. 540 of 2019, the prayer of the petitioner is to issue a writ in the nature of certiorari for quashing Sigaudi P.S. Case No. 02 of 2018 registered on 09.01.2018 on the basis of a written report submitted by the Mines Inspector, Patna alleging therein that the Broad Son Commodities Pvt. Limited (for short 'Company') was settled sand ghats in Patna district for the period 2015-2019. Upon inquiry of the monthly report submitted for Chakiya-2, Jarka and Tikul sand ghats, it appears that excess sand had been excavated than prescribed in the mining plan and the environment clearance. It has been further alleged that the total quantity of excess mined sand is 76,98,625 cubic feet. The settlee did not perform mining work according to the approved mining plan and the environment clearance and thereby illegally excavated sand, which is in violation of Rules 22(2) and 21-A(3) and (4) of the 1972 Rules. He has further alleged that according to Rule 40(8) of the 1972 Rules, the cost of 76,98,625 cubic feet sand at the rate of Rs.7/- per cubic feet = Rs.5,38,90,375/- is recoverable from the Company. He has further alleged that the petitioner being one of the directors of the Company and other

officials have illegally excavated excess sand, which has caused loss to the exchequer and damage to the environment.

9. On the basis of the aforesaid written report of the Mines Inspector, Patna, after instituting the case, investigation has been taken up.

10. For the sake of convenience, necessary details of other police cases are also given here-in-below in tabular chart :-

Sl. Nos.	Sand ghats from which excess excavation was made	Quantity of excess excavated sand	Value of excess excavated sand
Cr.W.J.C. No. 676 of 2019 arising out of Bhagwanganj P.S. Case No. 02 of 2018	Sahora Khnia Patiranga	95,07,800 cubic feet	6,65,54,600/-
Cr.W.J.C. No. 693 of 2019 arising out of Dhanarua P.S. Case No. 07 of 2018	Debdaha Pavera Satparsha	93,23,200 cubic feet	6,52,62,400/-
Cr.W.J.C. No. 718 of 2019 arising out of Naubatpur P.S. Case No. 07 of 2018	Pakua Dumri	24,32,900 cubic feet	1,70,30,300/-

11. Mr. S.B. Upadhyay, learned senior advocate appearing for the petitioner submitted that from perusal of the contents of the FIR, it would be evident that the only allegation of the informant is regarding excess mining of sand in comparison to the limit prescribed in the mining plan and environment clearance. He contended that the excess mining is entirely distinct from illegal mining. According to him, excess mining is not illegal mining. Illegal mining is defined in Section 2(iia) of Mineral

Concession Rules, 1960 framed under Section 13 of the MMDR Act. He pleaded that the Company is a valid settlee of the State of Bihar for mining sand in the district of Patna and, hence, Section 21 of the MMDR Act would not be attracted in case of the petitioner.

12. Advancing his arguments, Mr. Upadhyay, learned senior advocate submitted that the jurisdictional Magistrate cannot take cognizance of any offence under the MMDR Act or the 1972 Rules or 1986 Act in absence of any complaint under Section 200 of the Code of Criminal Procedure (for short 'Cr.P.C') filed by a person authorized on behalf of the Government in view of express legal bar engrafted in the statutory provisions of the Acts and the Rules under which the petitioner is being prosecuted.

13. As far as allegations made under Section 379 of the IPC is concerned, Mr. Upadhyay has submitted that since the Company is a valid settlee and has not dishonestly removed any sand from the sand ghats, the ingredients of Section 379 of the IPC would not be attracted. He contended that the informant detected the fact of excess mining from the monthly returns filed by the Company. Had there been any intention of the Company to commit theft, it would not have reported about the excess mining in its monthly returns.

14. In respect of allegations made under Sections 406 and 420 of the IPC, he has submitted that from perusal of the FIR itself, it would appear that there is no averment about cheating or fraudulent intention of the petitioner at the time of entering into the contract. Thus, he submitted that the ingredients of the offences under Sections 406 and 420 of the IPC would also not be attracted.

15. Referring to the new sand policy, notification of the State Government hearing 2887 dated 22.07.2014 and work orders in different calendar years, he has submitted that it has been provided that in case the Company excavates sand in excess, it shall be liable to pay royalty.

16. Lastly, he has submitted that the IPC does not provide for vicarious liability upon the director of the Company for any of the offences alleged to be committed by the Company. In absence of the Company having been impleaded as an accused, the petitioner cannot be charged and put on trial for the offences punishable under the Penal Code.

17. Per contra, Mr. Gyan Prakash Ojha, learned advocate appearing for the State submitted that the allegations made in the FIR would clearly attract the ingredients of the offences alleged. The petitioner has admitted that the Company has excavated more

sand from the respective sand ghats, which is in violation of terms and conditions of the agreement. He submitted that since it is also a case of theft of State revenue, the petitioner being one of the directors of the Company in whose favour settlements of sand ghats were made is liable to be prosecuted. He argued that the petitioner cannot take a plea of vicarious liability as he had actively participated in the excavation of excess sand from the sand ghats. According to him, it is the petitioner, who was the executive agent of the Company for the purposes of excavation of sand. He pleaded that though the petitioner has obtained environment clearance and was allowed to excavate the sand and there was capping limit per month for excavation of sand ghats, after verification of monthly returns filed by the petitioner, it was found that the Company had crossed the environment clearance capping limit. He urged that since the investigation into a cognizable offence is going on, it would not be proper to interdict the FIR at the stage of investigation.

18. In the counter affidavit filed on behalf of the respondent nos. 8 and 9, it is stated that the Company was given lease for a period of five years on calendar year basis in terms of excavation limits from the rivers of the district. It was allowed to carry on its mining activities except during the ban period round

the calendar year and was also allowed to excavate the permitted level of capping limit per annum as per environment clearance given by the concerned authority.

19. Ms Kalpana, learned advocate appearing for the respondent nos. 8 and 9 submitted that since the Company violated the terms and conditions of the capping limit of environmental clearance, a case for prosecution is made out. She submitted that the investigation would reveal the correct facts. According to her also, since the allegations made in the FIR do attract the ingredients of a cognizable offence, it would not be proper for this Court to consider the case of the petitioner on merit. She has urged that as the Company, being juristic person has violated the terms and conditions of the licence granted for excavation of sand, there is no illegality in institution of the FIR against the petitioner, who was the executing agent-cum-director of the Company.

20. Having heard learned counsel for the parties and carefully perused the record, I find that in the year 2014 pursuant to a tender floated by the State of Bihar for settlement of sand ghats, the Company was the highest bidder in the district of Patna. Vide letter no. 961 dated 31.12.2014, a work order was issued in favour of the Company for mining activity on the sand ghats in the district of Patna. Thereafter, individual agreement was executed in

the month of December, 2014 between the Company and the District Magistrate-cum-Collector, Patna. Upon monthly returns submitted by the petitioner, the Mining Inspector, Patna lodged Sigaudi P.S. Case No. 02 of 2018 under various provisions of the Acts and the rules referred to above.

21. From perusal of the contents of the FIR, it would be manifest that the only allegation of the informant is regarding excess mining of sand.

22. Clause 3(vii) of Appendix-1 of the new sand policy and Clause 5 of Appendix 2 of the said policy, as contained in Annexure-1 to the present application, provides that in case the settlee excavates sand in excess to the settlement amount then it shall pay royalty for the excess quantity of sand excavated.

23. Further, notification no. 2887 dated 22.07.2014 at Appendix 2 Clause 6(vii), as contained in Annexure-2 to the present application provides that in case the royalty of the sand excavated in any year is in excess to the settlement amount then excess royalty shall be paid by the settlee.

24. In the work orders for the calendar year 2015 at clause 11(xv) (Annexure-4) for the calendar year 2016 at clause 11(xiv) (Annexure-6), for the calendar year 2017 at clause 11(xiv), for the calendar year 2018 at clause 18(xiv) and for the calendar

year 2019 at clause 15(xiv) (Annexure-12), it has been provided that in case the settlee excavates sand in excess of the settlement amount, it shall be liable to pay the royalty for the excess sand so excavated.

25. Even in the agreement of the calendar years 2015 and 2016, as contained in Annexures-5 and 7 to this application, at Part III Clause 22, it is provided that "*Settlee shall have to pay extra royalty in case he/they extract/mine sand excess to the bid amount in that calendar year*".

26. Rule 26(b) of the 1972 Rules lays down that royalty shall be charged at the rates specified in Schedule II. For mining of sand, Schedule II prescribes the auctioned amount as the chargeable rate and Note II of Schedule II lays down that "*the settlee shall pay the extra Royalty for the excess quantity of extracted and dispatched sand more than the equivalent action amount*".

27. Neither the Sand Policy, 2013 nor the notification no. 2887 dated 22.07.2014 nor the work orders and agreements nor the Acts and the rules penalizes excess mining in any manner. It has specifically been stated in the sand policy, work orders, agreements and the relevant Acts and the rules that the excess mining shall be treated to be violation of the agreement or the

terms of the licence. The 1972 Rules do not categorize excess mining an offence. Thus, it would be evident that for mining in excess, the settlee shall be liable to pay excess royalty.

28. It has rightly been contended on behalf of the petitioner that excess mining unlike illegal mining is a civil wrong. It is not an illegal mining.

29. Illegal mining is defined in Section 2(iia) of the Mineral Concession Rules, 1960 framed in exercise of powers conferred by Section 13 of the MMDR Act as under :-

> "2(ii-a) "illegal mining" means any reconnaissance or prospecting or mining operation undertaken by any person or a company in any area without holding a reconnaissance permit or a prospecting licence or as the case may be, a mining lease as required under sub-section (1) of Section 4 of the Act."

30. It is not the case of the informant that mining operation was carried out by the Company without permit. Hence, it cannot be said that the Company indulged in illegal mining.

31. Section 21 of the MMDR Act prescribes punishment for violation of Section 4(1) and 4(1-A), which prohibit mining activity except in accordance with the valid licence. It penalizes mining activity by a person, who does not have any licence.

32. In the instant case, admitted case of the prosecution is that the Company is a valid settlee/licensee of the State of Bihar for mining sand in the district of Patna. Hence, offence punishable under Section 21 of the MMDR Act would not be attracted.

33. Section 22 of the MMDR Act reads as under :-

> "**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."

34. A similar provision is contained under Rule 41 of the Rules of 1972, which reads as under :-

> "**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".

35. In the instant case, the FIR has been registered by the Mines Inspector contrary to the requirements of Section 22 of the MMDR Act and Rule 41 of the 1972 Rules.

36. For the offence alleging violation of any provisions of the MMDR Act or any rules made thereunder, an FIR cannot be instituted rather a complaint in writing has to be made by a person authorized in this behalf.

37. The word ‘complaint’ has not been defined in MMDR Act or the rules framed thereunder. In absence of any definition of ‘complaint’ in the MMDR Act or the rules made thereunder, one has to look to the definition of ‘complaint’ given in the Cr.P.C.

38. Section 2(d) of the Cr.P.C defines ‘complaint’ 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.”

39. In view of the definition of the complaint in Section 2(d) of the Cr.P.C, there cannot be any doubt that an FIR cannot be treated as a complaint. The moment an FIR is instituted in respect

of an offence, it is required that the same be investigated upon and once the investigation is completed, the report is required to be submitted before the court under Section 173(2) of the Cr.P.C. The police report submitted under Section 173(2) of the Cr.P.C cannot be treated as a complaint. Thus, it would be evident that Section 22 of the MMDR Act puts restriction on the court to take cognizance of an offence punishable under the MMDR Act or the rules made thereunder except on a written complaint made by a person authorized in this behalf by the State Government or the Central Government.

40. Similarly, Rule 41 of the 1972 Rules puts a restriction on the court to take cognizance of any offence under the said rules except upon a complaint. In other words, it can be said that the jurisdictional court can take cognizance of any offence under the MMDR Act or the rules made thereunder only upon a written complaint under Section 200 of the Cr.P.C filed by a person authorized in this behalf.

41. Hence, even if the allegations made in the FIR are accepted to be true, the police could not register an FIR in respect of the offences punishable under the MMDR Act or the rules made thereunder.

42. As far as the offence punishable under Section 379 of the IPC is concerned, an argument has been advanced on behalf of the petitioner that in absence of any allegation that the Company excavated sand in a clandestine manner with an intent to remove mineral dishonestly, the offence punishable under Section 379 of the IPC would not be attracted against it. In support, reliance has been placed on the decision of the Suprem Court in ***State (NCT of Delhi) Vs. Sanjay***, since reported in ***(2014) 9 SCC 772.***

43. In ***State (NCT of Delhi) Vs. Sanjay*** (Supra), the Supreme Court observed as under :-

> "71. **However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is laible to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.**
>
> **72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining**

> **activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC** before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(*d*) of the Code of Criminal Procedure."
>
> (emphasis mine)

43. Thus, it would be evident from the ratio laid down by the Supreme Court in ***State (NCT of Delhi) Vs. Sanjay*** (Supra), that in case a person without any lease or licence or any authority

extracts minerals in a clandestine manner with an intent to remove dishonestly from the possession of the State, the ingredients of the offence punishable under Section 379 of the IPC would be attracted. But, if the person having valid licence or lease or authority excavates minerals in excess of the quantity for which permission is granted, it cannot be said that the ingredients of the offence punishable under Section 379 of the IPC is attracted.

44. In so far as the offences under Sections 406 and 420 of the IPC are concerned, since the petitioner is a valid licensee, it cannot be said that there was an intention to cheat right from the beginning. The petitioner was filing his returns and on the basis of returns filed by him, the informant came to know that the Company had excavated sand in excess to the permissible limit. Thus, in absence of any mens rea as also any dishonest intention to cheat right from the beginning, the ingredients of the offences punishable under Sections 406 and 420 of the IPC would also not be attracted.

45. That apart, it has rightly been contended that concept of vicarious liability is unknown to criminal law. IPC does not provide for vicarious liability upon the directors of the company for any offence alleged to be committed by a company. In absence of company having been impleaded as an accused, the petitioner

cannot be charged and put on trial for the offence punishable under the IPC.

46. In ***S.K. Alagh Vs. State of U.P.***, since reported in ***(2008) 5 SCC 662***, the Supreme Court observed as under :-

> "The Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence."

47. In the FIR, there is no specific allegation against the petitioner. The allegation of excess mining is against the Company. The Company has not been made an accused in the case. In that view of the matter also, the petitioner cannot be prosecuted for any of the offences punishable under the IPC.

48. Another Section under which the FIR has been instituted is Section 15 of the 1986 Act, which reads as under :-

> "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.

49. Section 19 of the 1986 Act provides for taking cognizance of the offences under the Act, which reads as under :

> "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 authorised in this behalf by that Government; or
>
> (*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."

50. In exercise of power conferred under clause (a) of Section 19 of the 1986 Act, the Central Government has authorized the Government of the State (represented by the Secretary to the State Government, Chairman or Principal

Secretary of the State Board for the prevention and control of water, pollution constituted under Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) or a State Board for the prevention and control of air pollution constituted under Section 5 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981) for the whole of the State of Bihar and the water in the whole of the district while Standing Order 394(e) dated 16th March, 1987.

51. In the instant case, the informant is the Mining Inspector. Apart from the fact that no complaint as mandated under Section 19 of the Environment (Protection) Act has been lodged, the informant a Mining Inspector is not the officer authorized for the purpose of Section 19(a) of the Act.

52. In view of the restrictions imposed on the court to take cognizance of an offence except on a complaint made by the Central Government or any authority or officer authorized or any person, who has given notice of not less than 60 days under Section 19 of the 1986 Act, institution of the FIR in question under Section 15 of the 1986 Act is patently bad in law.

53. In view of the discussions made above, it would be apparent that in a case where mining activities were being carried out in violation of the mining plan or environment clearance,

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, the jurisdictional Magistrate cannot take cognizance of the offence. Since the MMDR Act and the rules made thereunder as also the 1986 Rules 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. It is well settled position in law that if a special statute lays down a procedure, the procedure laid down under the general statute shall not be followed.

54. Since the present FIR is against express legal bar created by the MMDR Act, 1972 Rules and the 1986 Rules and none of the ingredients of the offences under the Indian Penal Code are attracted, in the opinion of this Court, allowing the prosecutions to continue would amount to an abuse of the process of the court.

55. Accordingly, the writ petitions are allowed. The FIRs of Sigaudi P.S. Case No. 02 of 2018, Bhagwanganj P.S. Case No. 02 of 2018, Dhanarua P.S. Case No. 07 of 2018 and Naubatpur P.S. Case No. 07 of 2018 are hereby quashed.

56. It is made clear that this Court has not adjudicated upon the issue of civil liability arising out of excess mining of sand by the petitioner. Any of the observations made in these cases would have no consequence in any proceedings, which may arise between the parties in respect of civil liability.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	02.09.2019
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