

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.779 of 2019

Arising Out of PS. Case No.-155 Year-2018 Thana- PAHARKATTA District- Kishanganj

Md. Israil Son of Late Haji Wasimuddin Resident of Village - Tupamari, P.O.
Belwa, P.S.- and District.- Kishanganj.

... .. Petitioner

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar, Patna
2. Director General of Police, Bihar, Patna.
3. Deputy Inspector General of Police, Purnea, Patna.
4. Superintendent of Police, Kishanganj.
5. Station House Officer, Paharkatta Police Station, District - Kishanganj.
6. Mines Inspector-cum-Competent Officer, Department of Mines, Kishanganj.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan, Adv.
For the State	:	Mr. Gyan Prakash Ojha, GA-7
For Respondent No.6	:	Mr. Sumit Shekhar Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 14-10-2019

Heard Mr. Sanjeev Ranjan, learned counsel for the petitioner, Mr. Gyan Prakash Ojha, learned counsel for the State and Mr. Sumit Shekhar Pandey, learned counsel for the respondent no.6.

2. With the consent of the parties, this application has been taken up for final hearing and disposal at the stage of admission itself.

3. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for quashing the first information report (for short 'FIR') of Paharkata P.S. Case



No. 155 of 2018 registered under Section 40 of the Bihar Minor Mineral Concession Rules, 1972 (for short 'the Rules') and Section 15 of the Environment (Protection) Act, 1986 (for short 'the Act').

4. Mr. Sanjeev Ranjan, learned counsel appearing for the petitioner submitted that the FIR in question has been instituted in contravention of the statutory provisions prescribed under the Rules and the Act. According to him, 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 complaint preferred by a person authorized by the Central/State Government, Section 154 of the Code of Criminal Procedure (for short 'Cr.P.C') stands excluded and, therefore, an FIR cannot be registered by the police. He has urged that there is no provision under the MMDR Act, 1957 or the Rules conferring any power upon the police authority to investigate any case.

5. He has contended that the allegation in the FIR is that the petitioner was carrying on mining activities in violation of mining plan, which was hazardous to the environment. According to him, any contravention in violation of the conditions of the settlement or environmental clearance would be punishable only



by way of filing a complaint and not by a police report. In support of his contention, he has placed reliance on a decision of this Court in *M/s Mahadev Enclave Pvt. Ltd. Vs. State of Bihar & Ors.*, since reported in **2019 (3) PLJR 166**.

6. The State has contested the matter. However, Mr. Gyan Prakash Ojha, learned counsel appearing for the State concedes that in *M/s Mahadev Enclave Pvt. Ltd.* (Supra) this Court has already held that the prosecution for the alleged violation of or any irregularity in mining by a settlee, who has been given mining lease of sand ghats, cannot be launched on the basis of police report submitted under Section 173(2) of the Cr.P.C. He has also conceded that the State has not challenged judgment of this Court passed in the matter of *M/s Mahadev Enclave Pvt. Ltd.*

7. Having heard the parties, firstly I would take note of the allegations made in the FIR.

8. The informant Sanjay Prasad, the District Mines Officer, Kishanganj has alleged that on 04.12.2018, at about 8:00 a.m., a joint inspection team consisting of he himself, the Sub-Divisional Officer, Kishanganj, the Deputy Collector Land Reforms, Kishanganj and the District Transport Officer, Kishanganj visited Raipur Kharudah ghat and found a dredger by



the side of the river. It appeared that the said dredger was used for mining of sand. The informant has further alleged that the settlee himself has written letter to the department that it was a tractor Ghat, but in course of inquiry, empty trucks were found near the Ghat. He has further alleged that one Dhaneshwar Harijan gave his statement that sand from the Ghat is being transported mostly by truck.

9. On the basis of the aforesaid allegations, the informant alleged that the provisions prescribed under Rule 40 of the Rules and Section 15 of the Act were violated by the petitioner.

10. Admitted facts of the case are that in a public auction held on 13.01.2015 for settlement of entire Balu Ghat in the district of Kishanganj for a period of five years, the petitioner was declared the highest bidder.

11. Accordingly, settlement was made in his favour and he was directed to deposit security amount.

12. After due formalities, work order was issued in his favour.

13. Thereafter, an agreement was executed and the petitioner submitted mining plan along with environmental clearance certificate of the sand Ghats. The settlements were given



to the petitioner of the sand Ghats under certain terms and conditions of the agreement.

14. As seen above, the prosecution of the petitioner by way of instituting an FIR under Section 154 of the Cr.P.C has been launched mainly on two grounds, which are as under :-

(a) A dredger device being used for mining sand was found near the bank of the river, and

(b) Though the mode of transportation of sand at the Ghats was by tractor, the settlee used to transport the same by truck.

15. The petitioner has challenged the FIR mainly on the ground that in terms of the provisions of the Rules and the Act, cognizance of the alleged offence could be taken only on a complaint preferred by a person authorized under the Rules or the Act and an FIR cannot be registered by the police.

16. In order to appreciate the arguments advanced at the Bar, it would be appropriate to refer to the relevant provisions of the Act and the Rules as also of the MMDR Act, 1957.

17. Section 4 of the MMDR Act, 1957 puts restriction on prospecting or mining operations by any person except under the lease or licence. It reads as under :-

“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 MMDR Act, 1957, which prescribes penalties in case of contravention of the provisions of



sub-section (1) or sub-section (1-A) of Section 4 or any rule made under any provisions of the said Act 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 authorized 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 MMDR Act, 1957 bars taking cognizance of any offence punishable under the said Act or rules



made there under except upon a written complaint made by a person authorized in this behalf by the Central Government or the State Government. It 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 MMDR Act, 1957 confers power upon the State Government to make rules in respect of minor minerals. It 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 sub-section (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 the powers conferred under Section 15 of the MMDR Act, 1957, vide notification dated 22.06.1972, the State Government enacted the Rules.

22. Rule 40 of the 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 Contract or 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 Rules confers power to the court of Judicial Magistrate 1st Class to take cognizance in respect of any offence punishable under the rules. It 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 term 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, 1957 making an offence under sub-section (1) cognizable inspite of 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 of competent jurisdiction 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. Furthermore, Rule 41 of the 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.

29. Thus, neither under the MMDR Act, 1957 nor under the Rules cognizance of any offence can be taken on the basis of a police report under Section 173 (2) of the Cr.P.C.

30. In the instant case, admittedly, there is no such complaint as is warranted under Section 22 of the MMDR Act, 1957 and Rule 41 of the Rules against the petitioner. Hence, institution of the FIR under Section 40 of the Rules is patently bad in law.

31. At this stage, it would be apposite to reproduce Sections 15 of the Act which provides penalty for contravention of the provisions of the Act and the Rules, orders and directions. It reads thus :-

“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.”

32. Section 19 of the Act prohibits the court from taking cognizance of any offence under the Act except upon a complaint made by the Central Government or any authority or officer authorized by that Government or any person who has given notice of not less than sixty days of the alleged offence and his intention to make a complaint to the Central Government or to the authority or officer authorized. It reads thus :-

“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.”

33. In the instant case, admittedly, there is no such complaint, as is warranted by Section 19 of the Act against the petitioner.

34. 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.

35. In *M/s Mahadev Enclave Pvt. Ltd.* (Supra), while deciding an identical issue, this Court has recorded its findings in para 33 to 43 as under :-

“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 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 in-charge 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. CaseNo.14 of 2018 and Asthawan P.S. Case No.31 of 2018 and the investigations conducted by the police therein are, hereby, set aside.”



36. The case of the petitioner is squarely covered by the decision of this Court in *M/s Mahadev Enclave Pvt. Ltd.* (Supra). The respondents have conceded that the judgment of this Court in *M/s Mahadev Enclave Pvt. Ltd.* has not been challenged before the Supreme Court. Hence, the ratio laid down in the said case has attained finality.

37. Accordingly, the FIR of Paharkata P.S. Case No. 155 of 2018 is hereby quashed.

38. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.10.2019
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