

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1075 of 2018

Arising Out of PS. Case No.-470 Year-2017 Thana- NAWADA District- Nawada

Sarwan Kumar son of Devi Mahto, resident of Village- Sonu Bigha,
Kadirganj, P.S.- Nawada Nagar Kadirganj, District- Nawada.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sidhendra Narayan Singh

For the Opposite Party/s : Mr. Md. Arif

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 07-07-2022 Heard learned counsel for the petitioner and
learned A.P.P. for the State.

The present application has been filed seeking quashing of the F.I.R. vide Nagar (Kadirganj) P. S. Case No.470 of 2017 dated 16.07.2017 registered under Sections 40 and 26A of the Bihar Minor Mineral Concession Rule, 1972 (hereinafter referred to as the 1972 Rules).

The learned counsel for the petitioner submits that the informant in the F.I.R. alleges that on 16.07.2017, in course of surprise inspection, the inspection of the stock of sand kept towards west of Adarsh Brick-kiln Kadirganj was made and storage of sand was found and when papers relating to the storage and transportation of the sand was demanded from the people, who were present at the place of occurrence, they were



not able to produce any documents relating to the sand and they informed presently Mukhiya Ji is not there and as such, they are completely unaware of any documents relating to the sand, as such, it is alleged that storage and transportation of sand in absence of valid stockiest license is an offence under the Mines Act.

The learned counsel for the petitioner at the outset submits that from perusal of the allegation as alleged in the F.I.R., it would manifest that there is absolutely nothing in the F.I.R. even to remotely suggest that the sands were stolen i.e. were mined illegally, rather the informant alleges that storage and transportation of sand in absence of valid stockiest license is an offence under the Mines Act.

The learned counsel thus vehemently submits that it is not a case of theft as such the F.I.R. has not been instituted under any of the sections of the I.P.C., it is next submitted that the offence alleged are under the Rules.

It is next submitted that when the offence alleged is under the 1972 Rules, then the informant was obliged to act in accordance with the Rules as envisaged under the 1972 Rules.

The learned counsel thereafter submits that the present F.I.R. is not maintainable in view of Section 40 of the



1972 Rules, wherein it has been specifically incorporated that no Court shall take cognizance except on a complaint filed by a competent officer under the 1972 Rules, but in the present case, an F.I.R. has been instituted, when the F.I.R. does not even remotely whisper about any ingredients of an offence under the I.P.C.

The learned counsel further draws the attention of the Court to Section 40(4)(5) of the 1972 Rules which incorporates penalty for unauthorized extraction and removal of Miner Minerals:- **Section-40. Penalty for unauthorised extraction and removal of minor minerals:-**

(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.



The learned counsel for the petitioner thus submits that when the 1972 Rules very clearly stipulates that how a case is to be filed when an offence under the Rules are alleged, then an F.I.R. instituted is clearly in breach of the Rules and thus, prima facie demonstrates that the authority, who had instituted the F.I.R. was completely unaware of the law relating to filing of complaint in relation to an offence confined under the 1972 Rules.

It is next submitted that it absolutely does not stand to reason that the informant, who is an officer under the Mines Act, was completely unaware of the Rules relating to Minor Minerals, or else the present F.I.R. would not have been instituted. It is thus submitted that institution of an F.I.R. in breach of the rules is an abuse of the process of the Court and thus, is fit to be quashed.

The learned A.P.P. opposes the submission of the learned counsel for the petitioner and relies on a judgment of the Hon'ble Supreme Court in the case of the **State (NCT of Delhi) v. Sanjay reported in (2014)9 SCC page 772** and in the case of **Jayant and others v. State of Madhya Pradesh reported in (2021)2 SCC 670** to submit that the Hon'ble Supreme Court has held that the F.I.R. is maintainable and submits that offences



under the I.P.C. and the offences under MMDR Act are distinct and different and it is permissible to lodge proceedings under the I.P.C. and proceedings under the MMDR Act.

The learned counsel for the petitioner rebuts the submissions of the learned A.P.P. and submits what the Hon'ble Supreme Court has held in the aforesaid cases has no application in the facts of the present case.

The learned counsel for the petitioner next submits that a slight change in the facts of a case would make a sea difference in the judgment of the Court, hence judgments of the Courts should not be cited like an Euclid's Theorem and for the said proposition relies on the judgment of the Hon'ble Supreme Court in the case of **Bharat Petroleum Corporation Limited and another v. N. R. Vairamani and others reported in (2004)8 SCC 579.**

The learned counsel for the petitioner next submits that the Hon'ble Supreme Court in the State (NCT of Delhi) v. Sanjay (supra) was dealing with a case in which an F.I.R. was instituted under Section 379 and other provision of the I.P.C. and the issue raised in the said case was whether the provisions contained in Sections 21 and 22 and other Sections of the Mines and Minerals (Development and Regulation) Act,



1955 (herein after referred as the MMDR Act) would operate as bar against prosecution of a person who has been charged with allegation which constitutes offences under Section 379 and other provisions of the I.P.C.

It is next submitted in the said case an F.I.R. was registered by the police suo motu having come to know that some persons were removing and selling sand from the Yamuna Basin from the last so many days and on receipt of such information, the police officers committed raid and visited the site where they found one dumper filled with sand, further because of non-production of any documents and valid papers, the digging equipments were seized and taken into possession and persons were arrested and an F.I.R. was registered on the charges of illegal mining under Section 379, 114 I.P.C. besides being cognizable offence under Section 21(4) of the MMDR Act, the said F.I.R. was challenged on the ground that offence if at all committed, cognizance would have been taken under the provision of the MMDR Act, that too on the basis of complaint to be filed under Section 22 of the Act by an authorized officer.

The learned counsel submits that several F.I.Rs. were challenged on the said ground. It is next submitted that the Hon'ble Supreme Court after examining the case laws



on the issue threadbare and after examining the provisions of the I.P.C., Cr.P.C. and MMDR Act came to a considered conclusion as recorded in **State (NCT of Delhi) v. Sanjay reported in (2014)9 SCC page 772:-**

“69. Considering the principles of interpretation and the wordings used in [Section 22](#), in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the ground water levels.

70. There cannot be any dispute with regard to restrictions imposed under the [MMDR Act](#) and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of [Section 4](#) and other sections of the Act, the officer empowered and authorized under the Act shall exercise all the powers



including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorized officer. In case of breach and violation of [Section 4](#) and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in [Section 22](#) of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of [Section 4](#) of the Act and not for any act or omission which constitute an offence under [Indian Penal Code](#).

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 [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, gravels and other minerals from the river, which is the property of the State, out of 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 person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under [Section 173, Cr.P.C.](#) before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in [Section 190 \(1\)\(d\) of the Code](#) of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-à-vis [the Code](#) of Criminal Procedure and [the Indian Penal Code](#), we are of the definite opinion that the ingredients constituting the offence under the [MMDR Act](#) and the ingredients of dishonestly removing sand and gravel from the riverbeds without consent, which is the property of the State, is a



distinct offence under the [IPC](#). Hence, for the commission of offence under [Section 378 Cr.P.C.](#), on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of the MMRD Act. Consequently the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled. Consequently, these criminal appeals are disposed of with a direction to the concerned Magistrates to proceed accordingly.”

The learned counsel for the petitioner thereafter distinguishes the case of Jayant v. the State of M.P. (supra) by submitting that in the said case also the issue was different from the present case.

The learned counsel submits that in the case of Jayant v. State of M.P., the accused indulged in illegal mining and were caught and their tractor and trolleys were seized, later in terms of Rule 53 of the M.P. Minor Mineral Rules, 1996 (hereinafter referred to as the 1996 Rules) a proposal was made for compounding after obtaining the permission of the Collector, the offence was compounded and the tractors and trolleys along with the minerals, which were illegally excavated and transported were released in favour of the accused persons,



thereafter in pursuance of a report published in a daily newspaper Bhaskar on 08.09.2019 with respect to illegal excavation/ transportation of mineral sand from Chambal, Shivna and Retam and other tributary rivers, from the district Mandsaur and in surrounding places, it was reported that due to illegal transportation of the minerals without payment of royalty revenue loss is occurring. Accordingly, the learned Judicial Magistrate, 1st Class, Mandsaur took note of the aforesaid information and taking note of the decision in the case of State (NCT of Delhi) v. Sanjay (supra) directed to register a criminal case under Section 156 (3) of the Cr.P.C. and for submitting a report after due investigation and the police was directed to register an F.I.R.

The learned counsel submits that the said decision of the learned Magistrate was challenged in the High Court by filing a quashing application on the ground that the appellants (before the Hon'ble Supreme Court) and other violators that in view of the bar under Section 22 of the MMDR Act, the order of the learned Magistrate directing to register an F.I.R. is unsustainable and deserves to be quashed and it was further contended that they have already compounded the offence in terms of Rule 53 of the 1996 Rules and as such, the



learned Magistrate was not justified in directing to initiate a fresh proceedings which would be hit by the principle of ‘double jeopardy’, further the State of M.P. also filed an appeal against the order of the learned Magistrate on the same grounds and also on the ground that the order of the High Court confirming the order of the learned Magistrate affects the power of the authorized person to compound the offence under Rule 18 of the 2006 Rules.

The learned counsel submits that the Hon’ble Supreme Court again after examining the case law in this regard and the provisions of the MMDR Act, Cr.P.C. and the I.P.C. held in **Jayant and others v. State of Madhya Pradesh reported in (2021)2 SCC 670**

“21.1. that the learned Magistrate can in exercise of powers under [Section 156\(3\)](#) of the Code order/direct the concerned In charge/SHO of the police station to lodge/register crime case/FIR even for the offences under the [MMDR Act](#) and the Rules made thereunder and at this stage the bar under [Section 22](#) of the MMDR Act shall not be attracted;

21.2. the bar under [Section 22](#) of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the [MMDR Act](#) and Rules



made thereunder and orders issuance of process/summons for the offences under the [MMDR Act](#) and Rules made thereunder;

21.3. for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

21.4. that in respect of violation of various provisions of the [MMDR Act](#) and the Rules made thereunder, when a Magistrate passes an order under [Section 156\(3\)](#) of the Code and directs the concerned Incharge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned Incharge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in [Section 22](#) of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect



of the violations of the various provisions of the [MMDR Act](#) and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

21.5. in a case where the violator is permitted to compound the offences on payment of penalty as per subsection 1 of [Section 23A](#), considering subsection 2 of [Section 23A of the MMDR Act](#), there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the [MMDR Act](#) or any rule made thereunder so compounded. However, the bar under subsection 2 of [Section 23A](#) shall not affect any proceedings for the offences under the [IPC](#), such as, [Sections 379](#) and [414 IPC](#) and the same shall be proceeded with further.

22. In view of the above and for the reasons stated above, the appeals filed by the violators/private appellants are partly allowed, to the extent quashing the proceedings for the offences under the [MMDR Act](#) – [Sections 4/21](#) of the [MMDR Act](#) only. The appeal preferred by the State of Madhya Pradesh stands dismissed.”

The learned counsel thus submits that in the present case the facts are entirely different, as submitted aforesaid, that the F.I.R. does not even remotely reflect any offence under the I.P.C., the offence alleged is under the provisions of the 1972 Rules, the informant is an officer of the Mines Department and as such, he had absolutely no authority



to institute an F.I.R. in breach of the provisions of Section 40 of the 1972 Rules.

After hearing the learned counsel for the petitioner and the learned A.P.P. and after taking into consideration the submissions made by the learned counsel for the petitioner, the Court comes to a considered conclusion that the judgment relied by the learned A.P.P. was pronounced in a different context as the Hon'ble Supreme Court was dealing with a case of theft of sand for which an F.I.R. was instituted by the police suo motu in the case of State (NCT of Delhi) vs. Sanjay (supra) and in the other case, the F.I.R. came to be instituted under the provisions of the I.P.C. on the orders of the learned Magistrate exercising powers under Section 156(3) of the Cr.P.C. which was upheld by the Hon'ble Supreme Court and in both the cases, the Hon'ble Supreme Court upheld the institution of the F.I.R. on the ground mentioned aforesaid, when in the present case, the informant is an officer of the Mines Department and does not allege theft of sand nor the allegations attract any provisions of the I.P.C., as such, the informant acted in breach of the Rules as envisaged under 1972 Rules.

Thus, allowing the continuation of the F.I.R. would be



an abuse of the process of the Court. Hence, the entire F.I.R.
being Nagar (Kadirganj) P. S. Case No.470 of 2017 is hereby
quashed.

(Satyavrat Verma, J)

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