

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-9706-2020

Date of decision : 22.08.2022

Satwinder Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Naveen Upadhyay, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

The petitioner herein seeks quashing of FIR No.0133 dated 11th of August, 2017 registered for the offences punishable under Section 379 of the Indian Penal Code, 1860 and Section 21 of the Mines and Minerals (Regulation of Development) Act, 1957 (hereinafter referred to as 'the 1957 Act'), at Police Station Ladhuwal, District Ludhiana.

2. FIR was registered alleging that -

“Main officer, Police Station Laddowal, Jai Hind. Today under signed ASI along with HC Satnam Singh No.556, HC Jaswant Singh 3816, PHG Khajan Singh No. 19820 on private vehicle were on patrolling at Bus Stop of village Chholey. Two upper Industrial development officer, Ludhiana namely Bhupinder Singh and Shingara Singh came there in their taxi numbered PB10GC3385 whose driver was Mohit. They were conversing when ASI Daljit Singh received a secret information to the effect that Satwinder Singh @ Bittu resident of village Bagge Khurd is excavating sand from his lands which is on road passing through Bagge Khurd to Baranhara, along with Rachpal Singh @ lali and Gurpal Singh @ baba

resident of Dairy Complex and Gulab resident of Ladiyan with the help of other drivers and on their Tippers and with help of their JCB Machines in connivance with each other were selling the excavated sand on the said Tippers in Ludhiana city at higher prices while Government of Punjab has put absolute ban on excavation of small minerals sand. If I mediate raid be conducted on land of Satwinder Singh @ Bittu then Rachhpal Singh @ bali Gurbal Singh @ baba and Gulab resident of Ladiyan could be apprehended along with their drivers and Tippers and JCB Machines while excavating. The excavation by Satwinder Singh @ Bittu then Rachhpal Singh @ bali Gurbal Singh @ baba and Gulab resident of Ladiyan along with their drivers and Tippers and JCB Machines found to be offence under sections 379 IPC, 21 of Mining Act, 1957, hence ruka is being sent through PHG Khajan Singh No.19820 for registering of FIR against above mentioned persons and FIR No. may be sent after registering it. Control room be informed..”

3. Ld. Counsel for the petitioner contends that the FIR and the proceedings subsequent thereto cannot be sustained as there is a bar under Section 21 of the 1957 Act. Only an authorized person under the Act was competent to initiate proceedings against the petitioner. That being so there is a legal bar in pursuing the present FIR. He further contends that so far as offence under Section 379 IPC is concerned, the same cannot be alleged against the petitioner as admittedly the sand is being alleged to be excavated from the lands of the petitioner only. Petitioner being himself owner of the land cannot be accused of stealing the sand from his land and, thus, offence under Section 379 IPC would not be made out. Lastly, he submits that the

petitioner is already in possession of a permission granted under the provisions of the 1957 Act vide Communication dated 8th of August, 2017 whereby he has been allowed to excavate and level the land in question.

4. I have heard Ld. Counsel for the petitioner and have carefully gone through the records of the case.

5. So far as bar under Section 21 of the 1957 Act is concerned, it is trite that the same cannot be pleaded once the FIR has been registered under Section 379 IPC as well in addition to the offences punishable under the 1957 Act. Section 379 IPC w.r.t. mines and minerals is not merely ousted for the reason that the land belongs to the accused/petitioner. As per the provisions contained in Section 4 (1A) of the 1957 Act, no person can transport/store any mineral otherwise than in accordance with the provisions of 1957 Act. Thus, contention raised at the hands of the petitioner that Section 379 IPC will not be made out, can't be adjudicated at this stage. Moreover, the fact that the petitioner himself sought permission before levelling the field itself shows that the minerals can't be dealt with accept with permission of the State.

6. So far as permission vide Communication dated 8th of August, 2017 is concerned, the same reads as under :-

“....Considering your request letter on above said subject Hadbast No.111 Khasra No.28//15/2, 28//16, 28//26, 29//1, 29//10, 29//11, 29//20/1 in Village Bagge Khurd, District Ludhiana, the copy of the notification released by Department of Industries and Commerce, Punjab, Chandigarh on dated 18/03/2015 vide no. GRS/6/CA-67/1957/S23-C/AMD (4)

2015 is attached along with. Leveling of the land would be completed within a month of issuance of this letter. During this period excess small minerals could not be sold. If you violate the provisions of Punjab Minor Mineral Rules, 2013 then appropriate legal action would be taken against you.

Sd/-

General Manager cum Mining Officer,
District Industrial Centre,
Ludhiana.”

7. From the bare perusal of the same it is evident that the petitioner was granted permission to level the land and there was no permission of excavate/transport the sand from the land.
8. As a sequel of the discussion held hereinabove, the present petition is dismissed.
9. Needless to say that anything observed herein shall not be construed to be an expression of an opinion on the merits of the case.

August 22, 2022

Dpr

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No