

121

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

CRM-M-14419-2017 (O&M)

Date of decision: 27.05.2022

CHHAJU SINGH

...Petitioner

Versus

STATE OF PUNJAB AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Sameer Sachdeva, Advocate
for the petitioner.

Mr. A.A. Pathak, Addl. A.G Punjab

SURESHWAR THAKUR, J. (ORAL)

1. In FIR No.77 of 06.09.2010, registered at Police Station Sohana, District Mohali, the present petitioner is alleged to make illegal mining of minor minerals at Bhagomajra, near village Bairampur.

2. The FIR was lodged on anvil of a complaint made to the police, by Mining Officer of the area concerned, with allegations therein, that the petitioner herein is visiting breaches, upon Section 3 of The Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the "Mines Act") inasmuch as, his lifting earth from his land, and, hence his also making consequent breaches qua Section 4(1) of the Mines Act.

3. After completion of investigations into the petition FIR, the learned trial Judge concerned, after issuance of summons, upon the present petitioner, rather successfully ensuring the personal appearance before him of the petitioner herein. However, at the pre-charge stage, he moved an application, seeking relief for his being discharged of the petition offences. However, the learned Judicial Magistrate concerned, through an order made thereons, on 20.07.2016,

dismissed the apposite application claiming therein, relief qua the petitioner herein being discharged of the petition offences.

4. The petitioner became aggrieved therefrom, and, proceeded to constitute a challenge thereto, through his instituting criminal revision petition No.24/12.08.2016, before the learned Additional Sessions Judge, SAS Nagar, Mohali. The above criminal revision petition became decided, on 10.04.2017. Upon the above criminal revision petition, the learned Revisional Court after affirming the verdict, as initially made by the learned Judicial Magistrate concerned, obviously dismissed the above criminal revision petition.

5. The petitioner becomes aggrieved from the afore concurrently made verdicts of dismissal, as, made upon his discharge application, therefore, he is led to institute thereagainst the instant petition, cast under Section 482 of the Cr.P.C.

6. The learned State counsel has vehemently argued before this Court, that the concurrent orders, as made against the petitioner herein, by both the learned Courts below, are not ingrained with any inherent vice. Therefore, he argues that the concurrent verdicts, as drawn by both the learned Courts below, upon the petitioner's application for discharge, do not merit any interference.

7. Since during the pendency of the instant petition before this Court, there was a direction, made upon, the learned trial Judge concerned, to not draw any further proceedings, upon the petition FIR, thereupon no evidence yet has been adduced by the prosecution, upon the charges, as became framed by the learned trial Judge concerned, for an offence punishable under Section 21(1)(2) of the Mines Act.

8. A reading of the reply filed to the instant petition, at the instance of the respondent, discloses, that the petitioner herein had removed ordinary earth

from his land, and, that he had hence breached the mandate of Section 4(1) of the Mines Act. However, the learned counsel for the petitioner has argued, that since Annexure P-3 appended with the petition, makes candid echoings, that when the Inspecting Officer, made an inspection of the site concerned, it becoming detected, that at the site, the land is level, and, also no mining activity apparently taking place at the site concerned. Furthermore, since it is also echoed therein, that when the visit was made to the site concerned, rather wheat crop being seen to be sown thereons. Moreover, when it is also clear from a reading of Annexure P-5, that the SHO of the Police Station concerned, had made a proposal to his superiors, for the filing of a cancellation report in respect of the petition FIR.

9. Therefore, on the basis of the above annexures, the learned counsel for the petitioner argues, that *prima-facie* the allegations made in the petition FIR are false, and/or, are contrived, and, thereupon the concurrent dismissal(s), as, made by both the learned Courts, upon the petitioner's application, for his becoming discharged, obviously suffers from gross non-application of mind to the exculpatory echoings carried thereins.

10. On the other hand, the learned State counsel also proceeds to make a vehement submission before this Court, that the above submission has been considered by the learned Revisional Court, and, that when the above submission has also been validly rejected, thereupon the above finding does not merit any interference.

11. For analysing the comparative worth of the rival contentions addressed before this Court by the learned counsels concerned, it is also necessary to bear in mind the fact, that in the reply on affidavit furnished to the petition, by the respondents, a clear communication becomes carried thereins,

that the petitioner herein had, from the joint khata land, made diggings of land measuring about 47' length, about 132' in width, and, 2' depth. The above contention is supported by the report of the Mining Guard which became drawn on 01.09.2010, and, which becomes appended as Annexure R-1 with the reply, on affidavit furnished to the petition. The drawing of Annexure R-1 on 01.09.2010, and, the much subsequent thereto drawings respectively of Annexures P-3, and, P-4, does at this stage, foster an inference from this Court, that when Annexure R-1, rather became drawn immediately subsequent to the purported incriminatory act being done, upon the petition land, by the petitioner, and, when in the quickest promptitude therefrom, inasmuch as, on 06.09.2010, on the basis of a complaint made by the authorized official, the petition FIR became registered. Therefore, *prima-facie*, at this stage with the promptest, to the alleged breaches, being made by the petitioner herein, rather the filing of a complaint before the police, by the authorized official concerned, obviously happening, does at this stage, constrain this Court to assign credence to Annexure R-1, than to the much subsequently therefrom drawn annexures P-3, and, P-4. The reason being, that the immense lapse of time since the drawing of Annexure R-1, and, the subsequent thereto drawings of Annexures P-3, and, P-4, did, *prima-facie* obviously became capitalized, by the petitioner to undo the acts, if any, of his purportedly making breaches of the Section 4(1) of the Mines Act.

12. The evidence for repelling the creditworthiness of Annexure R-1, is to be adduced before the learned trial Judge concerned, at the instance of the petitioner herein, and, not at this stage, as, this Court merely on rebuttals thereto being made on affidavit, cannot dis-impute credence thereto, unless the witness concerned, steps into the witness box, and, makes testification on oath, and,

thereafter during his cross-examination, the above exculpatory suggestions can become meted to him, besides can become appraised by the learned trial Judge concerned.

13. The learned counsel for the petitioner continued to make a vehement submission before this Court, that since no tools or machinery became recovered, at the petition site, therefore, *prima-facie* no credit is to be assigned to Annexure R-1, and, nor is to be assigned to the petition FIR. However, even if no tools or machinery were existing at the petition site, when the inspecting officials visited it, yet when the incidences of excavations made on the petition land, at the instance of the petitioner, and, as become disclosed in Annexure R-1, rather visibly of expansive lengths, widths, and, depths, thereupon they *prima-facie* cannot be construed to be falling within, the ambit of the explanation to the exemption carried in the Punjab Minor Mineral Rules, 2013, exemption(s) whereof are extracted hereinafter, inasmuch as, in Clause 3 thereof, rather any levelling of any agricultural fields by a land owner or possessor, upon his land, if not involving any disposal of ordinary earth outside the area, become(s) completely protected, nor the apposite explanation does also not become aroused, nor becomes attracted qua the petitioner herein. Contrarily when the echoings made in Annexure R-1, for reasons (*supra*), do completely countervail, the applicability of the above exemption, besides when as, stated above evidence to deprive Annexure R-1 of its evidentiary worth, can only be endeavoured to be adduced, only after the opening of trial against the petitioner before the learned trial Judge concerned, and, not before this Court. Therefore, the benefit of the above exemption can be claimed only, as an exculpatory defence only before the learned trial Judge concerned, and, not before this Court.

*“3. **Exemptions.**-(1) Notwithstanding anything contained in these rules, no rent, royalty or permit fee shall be charged or weighment slip required for,-*

(i) extraction of ordinary clay or ordinary sand by hereditary 'Ghumiards', who prepare earthen pots on a cottage industry basis, whose turnover during a year does not exceed two lac rupees;

(ii) excavation of masonry stones and ordinary clay from areas which are not occupied by lessee or contractor, for bona-fide personal requirements of the inhabitants of the local area;

***Explanation:** Local area means the village habitations falling within a radial distance of five kilometers of the site;*

(iii) levelling of any agricultural fields by a land owner or possessor, as the case may be, within land in his possession where no disposal of ordinary earth outside the area is involved;”

14. The learned counsel for the petitioner has yet continued, to make an argument before this Court, that the excavation activity, if any, of the above dimensions yet does not render it to constitute a “minor operation”. However, even the above made submission cannot be accepted, as Clauses (c) and (e) of Section 3 of the Mines Act, which become extracted hereinafter, forbids mining operations or extraction of mines, and, minerals, except when lease(s) or license(s) in respect thereof become issued by the competent authority. Apparently the petitioner did not obtain any valid lease or license from the competent authority. Though “minerals”, are not exhaustively defined in Clause (e) of Section 3, but yet the Central Government become yet empowered to, through a notification becoming carried in the official gazette, declare any others' than the ones existing in clause (e) of Mines and Minerals, to be also a “minor mineral”.

“3(c) “mining lease” means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;

(e) “minor minerals” means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;”

15. Since, the learned State counsel has drawn the attention of this Court, to a gazette notification issued on February 3, 2000, by the Ministry of Mines, and, Minerals, wherein, through the exercises of the above referred statutory empowerment, as, vested in the Central Government, it has declared “ordinary earth”, used for filling or levelling purposes of a embankments, road, railways, buildings rather also to be a “minor minerals”, in addition to the minerals already declared to be a “minor mineral” in Clause (e) of Section 3 of the Act. Consequently, the valid additions therein of “ordinary earth”, for the above purposes, becomes a legitimately forbidden activity. In sequel, at this stage, the above notification makes the above excavation of “ordinary earth”, to as echoed in Annexure R-1, to be *prima-facie* used for lawfully forbidden purposes.

16. The learned counsel for the petitioner yet argues, that since no tools or machinery became seized at the inspection petition site, and, also when no evidence became collected by the investigating officer concerned, qua the excavation of earth, attracted the mandate of the above notification, thereupon, the exemption (*supra*), carried in Rule 3 of Punjab Minor Mineral Rules, 2013, is yet applicable qua the relevant excavation activity, as it comprised the permissible levellings of land held, and, possessed by the petitioner, wherein the farming activity of levelling land hence held, and, possessed, by farmers concerned, rather are completely protected. As above stated, the above argument loses its vigor, as the dimensions of the excavations, as reported in Annexure R-1 *prima-facie*, irrespective of the relevant recoveries of machinery(ies), and,

tools being not made at the petition site, do unfold, the trite factum that the earth, as became removed from the land of the petitioner, was may be, used for filling or levelling purposes of embankment, road, railways, buildings, and/or, for any other forbidden purpose, and, when the above removal of ordinary earth, for the above prescribed purposes, has been through a notification issued by the Central Government, declared to be constituting mining of minor minerals, except when a valid lease or license became obtained by the excavator concerned. However, as above stated the required lease or license became not obtained from the competent authority by the petitioner. In consequence *prima-facie*, at this stage, this Court irrespective of the apposite seizures being not made, and, irrespective, of *prima-facie*, at this stage no worthy material existing, suggestive that the extraction of ordinary earth, was not used for filling or levelling purposes, and/or, for any other barred purpose, and, yet on anvil of the depths, lengths, and, widths of the excavation made of “ordinary earth” by the petitioner herein, is *prima-facie* suggestive of the relevant breaches being caused to the mandate carried in Section 4(1) of the Mines Act, and/or to the above alluded notification.

17. The learned counsel for the petitioner has also contended with much vigor before this Court, that the assumption of cognizance, and, also assumption of jurisdiction, upon a police report, by the learned Magistrate concerned, was completely barred, as he could assume valid cognizance(s) besides consequent thereto jurisdiction, in respect of the relevant statutory breaches, only when in respect thereof, a complaint in writing was made before him, by a person authorized, in this behalf by the Central Government or the State Government. In making the afore submission he makes dependence, upon Section 22 of the Mines Act, provisions whereof stands extracted hereinafter.

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

18. However, the above submission becomes rudderless, inasmuch as, the petition FIR became registered on the basis of a complaint made by an authorized person. Moreover, if so, and, even if in consequence thereof, an FIR was entered against the petitioner, at the Police Station concerned, and, whereafters, upon completion of investigations, a report under Section 173 of Cr.P.C., became filed before the learned Magistrate concerned. Therefore, when the substratum of the petition FIR, is, the complaint made before the police officials, by the authorized official concerned, and, when in sequel thereto investigations were carried thereinto. Therefore, when even otherwise, there is no specific exclusion in the Mines Act, that the authorized official concerned, not taking assistance of the police agency concerned, to make investigations into the complaint concerned. Resultantly, if on the basis of a complaint, as, made, by the competent officer, before the concerned, and, in sequel whereof the petition FIR became registered at the Police Station concerned, and, thereafter, it became thoroughly investigated, ultimately sequelling the institution of a report under Section 173 of Cr.P.C., before the learned trial Judge concerned. As a corollary when the complaint to the police officer by the authorized/competent officer, becomes the substratum for assumption of jurisdiction or the taking of cognizance thereons, by the learned trial Judge concerned. Therefore, when even otherwise in a complaint, the learned Magistrate concerned, could have even asked for investigations being made thereinto, by a police officer, thereupon, merely on the basis of a FIR being lodged at the Police Station concerned, on the basis of a complaint, as, made rather by an authorized officer, does not

deprive the learned Magistrate concerned, to assume cognizance, and, jurisdiction thereons, moreso, when the prosecution witness concerned, would testify with respect to the averments carried in the complaint, on anvil whereof, the FIR became registered.

- 19. There is no merit in the petition, and, the same is dismissed.
- 20. Pending miscellaneous application(s), if any, stand(s), disposed of.
- 21. This order is only for the disposal of the petition, and, shall have no bearings on the merits of the case.

27.05.2022

(SURESHWAR THAKUR)
JUDGE

ithlesh

Whether speaking/reasoned:-

Whether reportable:

Yes/No

Yes/No