

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 726 of 2014

Sri Ujjal Das

-Vs-

**The State of West Bengal
With**

C.R.R. 3023 of 2014

For the Petitioner : Mr. Sompriyo Chowdhury,
Mr. Arnab Sinha,
Mr. Sharnya Chatterjee,
Mr. Amartya Basu

For the State : Mr. Avishek Sinha

Heard on : 27.03.2023, 20.04.2023, 30.06.2023, 14.07.2023,
06.12.2023

Judgment on : 11.12.2023

Ananya Bandyopadhyay, J.:-

1. These two criminal revisional applications are filed by the petitioner respectively praying for:

- (a) quashing of proceedings in G.R. No. 2197 of 2012 pending before the Learned Additional Chief Judicial Magistrate, Asansol, Burdwan arising out of Barabani Police Station Case No. 130 of 2012 dated 13.10.2012 and;

(b) for quashing of proceedings in G.R.No. 111 of 214 pending before the Court of Learned Chief Judicial Magistrate Asansol, Paschim Burdwan arising out of Barabani Police Station Case No. 09 of 2014 dated 11.01.2014.

under Rule 33(1) of the West Bengal Minor Mineral Rules, 2002 and all orders passed therein.

2. The petitioner's contentions are as follows :-

- a) "M/s. J. Das and Brothers", a Partnership Firm, had been extracting stone from the land situated appertaining to Plot Nos. 1070, 1614, 1515 and other plots within Mouza- Khoirbad, District-Burdwan, measuring an area of 5.73 Acres and conducting stone quarry business under the name and style of "Nadai Stone Quarry" and since the year 1977 the said firm duly submitted Form-I of Regulation 3,6,7 and 8 of the Metalliferous Mines Regulation, 1961 to the Chief Inspector of Mines in India, Dhanbad on 16.06.1997 stating that actual date of re-opening the mine on 2nd January, 1977.
- b) The aforesaid 'Nadai Stone Quarry' constituted and comprised of mainly plot Nos. 1070, 1614, 1515 within Mouza Khoirbad, District – Burdwan including Plot Nos. 1566, 1615, 1617, 1616, 1618, 1619, 1621, 1622, 1623, 1669, 1068, 1024, 1026, 1007, 1013, 1014, 1018, 1019, 1020 and other plots all along the "Salma Dyke" measuring more or less 10 (ten) Acres within Mouza-

Khoirbad, Sub-Division- Asansol, District- Burdwan being the owners and occupiers within the meaning of Section 2(1) of the Mines Act, 1952.

- c) The then Maharaja of Burdwan had granted mining lease of stone quarry known as “Nadai Stone Quarry” in/upon all the above mentioned lands within Mouza- Khoirbad, District- Burdwan in favour of Birja Nandan Banerjee and his brothers, commonly known as “Banerjee Brothers” in the year 1942 and the said “Banerjee Brothers” including all their heirs and successors appointed and duly authorized “M/s. J. Das and Brothers” as a Contractor and sole selling agent of the stone mines and entrusted it with all responsibilities to work and undertake the stone quarry business as “Owner” as defined under the Mines Act. In view of the power granted by the Original lessor, M/s. J. Das and Brothers had been the lessee under residuary lease. Time to time said “Banerjee Brother” executed Deeds of Agreement in favour of the said firm extending the lease-hold right vide Deeds of Agreement dated 02.02.1980, 10.01.1986 and 19.01.1986.
- d) The aforesaid “M/s. J. Das and Brothers” since 1977 has respectively had been in continuous possession and control over the said mines situated over the Plot Nos.1070, 1614 and 1515 and other plots, complying statutory obligations and extracting stone from the said lands.

- e) The Additional District Magistrate, L.R. Asansol issued explosive Licence being No. ASL-13/78-79 in the year 1978 in favour of Sri Madhusudan Das, the then Managing Partner of the said Nadai Stone Quarry on behalf of “M/s. J. Das & Brothers” to use explosive materials for extraction of stone from the said plots with subsequent renewal of the same.
- f) Subsequently Janardan Das, being the Senior Member of the said Partnership firm became the managing partner of the said firm “M/s. J.Das and Brothers”, by a resolution and accordingly Janardan Das, for and on behalf of the said Firm applied for Explosive Licence in his name and the Licencing Authority, i.e. the Additional District Magistrate, Asansol issued the explosive Licence being No. ASL-4-23/91 in favour of the said Firm for extraction of stone over Plot Nos. 1070, 1614 of Mouza Khoirabad and the said Firm had lawful right to extract stone minerals from the above mentioned plot of lands of Mouza Khoirabad, District –Budrwan and since the year 1977, the Petitioners were in continuous possession and control of the aforesaid stone quarry.
- g) The said Firm moved a Writ Application under Article 226 of the Constitution of India being C.O. No. 2097(W) of 1988 against the State of West Bengal and other concerned Officials challenging the non-renewal of explosive licence and non-allowing the said Firm to deposit advance royalty by the concerned Government Officials in respect of the aforesaid stone quarry. The High Court at Calcutta

passed an order and disposed of the said Writ Application on 9th March, 1988 directing the Additional District – Magistrate, Asansol to assess the royalties payable by “M/s. J.Das and Brothers” and further directed the concerned authority to renew explosive licence of the petitioner.

- h) The Additional District Magistrate (L.R.), Asansol by a demand notice being Memo No. 1482/LR/MC dated 28.3.1988 written and addressed to the said Firm, directed it to make payment of Royalty on stones raised from Plot Nos. 1614, 1615, 1622, 1515 and 1070 of Mouza Khairbad, in respect of the aforesaid stone quarry during the period of 1978 to 1987 amounting to Rs.1,04,685.90/- only.
- i) The Additional District Magistrate (L.R.), Asansol by a letter being Memo No. 366/LR/MC ADM/SM dated 30.5.1988 addressed to the said Firm, directed and allowed the Firm to pay arrear Government Revenue on account of extraction of stones in respect of the abovementioned stone quarry of the petitioner.
- j) Accordingly the Firm deposited Rs. 10,000/- and Rs. 3000/- only on 23.8.1988 towards Royalty in advance before the concerned authority.
- k) The Firm again filed a Writ Application being C.O. No. 10359(W) of 1990 against the State of West Bengal and others challenging the aforesaid Memo being no. 366/LR/MC/ADM/SM dated 30/5/1988. The High Court at Calcutta by an order dated 27.8.1990, directed that the Firm would be at liberty to deposit a

sum of Rs. 1,00,000/-(Rupees One lakh) only in two installments and after deposit of the second installment the State respondent would issue necessary licence to the petitioner to carry on the business.

- l) The Firm deposited Rs.50,000/- by challan dated 03.12.21990 and again Rs.50,000/- by challan dated 22.03.1991 towards Roaylty in respect of their aforesaid stone quarry named “Nadai Stone Quarry”.
- m) The Block Land and Land Reforms Officer, Baraboni, the respondent no. 6 and the Sub-Divisional Land and Land Reforms Officer, Asansol, the respondent no. 5 on a vague, false and baseless grounds, illegally and in violation of law, arbitrarily with the connivance of the office bearer of the Panchayat Samiti, Intapara Gram Panchayet and Panuria Gram Panchayet had passed an order vide Memo No. LR-16/16(40 B.L. & L.R.O./Baraboni/92 dated 08.01.1992 directing the Firm to stop the stone mining over Plot No. 1070 within Mouza- Khoirbad and on the next day the B.L. & L.R.O., Baraboni with the help of the police discontinued the working of the stone quarry in respect of the said Plot No. stop work notice was served in respect of aforesaid Plot No. 1614, Mouza- Khoirbad.
- n) After issuance of the “stop work order” made, the said Firm challenged the same before this Hon’ble Court and several writ proceedings are pending before the Hon’ble Court relating to

Mining Operation in respect of the said Plot No. 1070. However in respect of Plot No. 1614, there is no bar and/or closure order and/or stop work order against the said Firm till date.

- o) The surviving partners of M/s. J. Das and Brothers, by execution of a Power of Attorney, authorized the present petitioner to conduct and supervise the mining operation of the said Firm in respect of Plot No. 1614, Mouza- Khoirbad and the other non-functioning members. As such, the petitioner had been conducting and supervising the mining operation in respect of the said plot for and on behalf of the said Firm as an authorized agent and on the basis of the mining right accrued in favour of M/s. J. Das and Brothers. The petitioner is not the quarry owner and/or the Lessee in respect of the said plot.
- p) The petitioner had been regularly paying royalty, cess and other lawful mining dues all along for the mining operation in respect of Plot No. 1614, Mouza- Khoirbad, District- Burdwan.
- q) Suddenly the petitioner came to know that the Block Land and Land Reforms Officer, Baraboni, had lodged complaint before the Officer-in-Charge, Baraboni Police Station on 12.10.2012 against the petitioner with explicit allegations of conducting mining operation in respect of Plot No. 1614 without approval of Government. On the basis of the said complaint, the Officer-in-Charge of Baraboni Police Station recorded First Information Report No.130/12 dated 13.10.2012 against the petitioner under

Rule 33(1) of the West Bengal Minor Minerals Rules 2002. Subsequently Proceeding was initiated being G.R. Case No. 2197 of 2012 in the Court of the Learned Additional Chief Judicial Magistrate- Asansol, District- Burdwan under the said Rule and Charge Sheet No. 103/12 dated 29.10.2012 was also submitted under the said Rule by the Investigating Officer and the Learned Additional Chief Judicial Magistrate was pleased to take cognizance.

- r) The Petitioner stated that the petitioner not being personally the quarry owner and/or lessee in respect of the plot in question and the entire mining operation having been done for and on behalf of “M/s. J. Das and Brothers”, any valid mining right accrued in favour of said firm entitled the petitioner to carry on mining operation for and on behalf of the said firm in respect of the plot in question and for such operation by the petitioner, no additional or separate lease/licence in the petitioner’s name is required and as such the First Information Report and the charge-sheet are misconceived, misleading, contrary to the actual state of affairs, violative of Mines and Minerals (Development & Regulation) Act, 1957 and are liable to be quashed.
- s) It was further contended that it was proved from the Explosive Licences as well as from the demand notice that the district mining authority had duly issued explosive licence and assessed Royalty for stones in respect of Plot No. 1614, Mouza- Khoirbad, District-

Burdwan and as such any further extraction in respect of the said plot by the petitioner and on behalf of the said Firm cannot be treated to have been without valid approval from the appropriate authority and both the First Information Report, the charge-sheet and the proceeding initiated there under are liable to be quashed.

- t) The petitioner contended that Rule 35 of the West Bengal Minor Minerals Rules, 2002 has no manner of application in respect of stone quarry which the petitioner continued for and on behalf of M/s. J. Das and Brothers under the aforesaid lease already recognized by the District Mining authority in the aforesaid licences and notices made therein, and no allegation of extraction without lease/licence can be raised against the petitioner and the First Information Report, the charge-sheet and the proceeding initiated there under are liable to be quashed.
- u) The petitioner further contended that under Entry 54, List-I, Seventh Schedule of the Constitution of India read with Section 2 of the Mines and Minerals (Development and Regulation) Act, 1957, Central Government being the absolute legislative authority in respect of all minor minerals, State Government, as a delegated Rule making authority under the said Act of 1957 has no legislative competence to prohibit the mining operation in an arbitrary manner and in the present case, the First Information Report having been lodged by the District Mining authority by complete misrepresentation of law and facts, the same is

practically a mala-fide attempt to stop/close the lawful mining operation in respect of the plot in question, beyond legislative competence of the State Legislature and both the First Information Report and the charge-sheet are liable to be quashed.

3. The petitioner further contends that royalty on extraction of stone having been accepted by the State Government for the relevant period, the petitioner had accrued substantive mining right for extraction of stone under the Mines and Minerals (Development and Regulation) Act, 1957 as well as under the West Bengal Minor Minerals Rules, 2002 and after acceptance of such royalty, the district mining authority is precluded in law from treating petitioner's extraction from the plot in question as unauthorized and such the First Information Report, the charge-sheet.
4. The petitioner further contends that the Learned Additional Chief Judicial Magistrate acted illegally and with material irregularity in the exercise of jurisdiction in not holding that both the First Information Report and the charge-sheet are misleading, mala-fide, based on misrepresentation of law and fact and suffers from total non-application of mind and do not disclose any offence punishable under Rule 33(1) of the West Bengal Minor Minerals Rules 2002.
5. The Learned Advocate for the petitioner submitted that :-
 - i. The petitioner not being personally quarry owner and/or lessee in respect of the plot in question and the entire mining operation having been done for and on behalf of "M/s. J. Das and Brothers", any valid mining right accrued in favour of said firm entitled the

petitioner to carry on mining operation for and on behalf of the said firm in respect of the plot in question and for such operation by the petitioner, no additional or separate lease/licence in the petitioner's name is required and as such the First Information Report and the Charge-sheet are misconceived, misleading, contrary to the actual state of affairs, violative of Mines and Minerals (Development and Regulation) Act, 1957 and are liable to be quashed.

- ii. It is proved from the Explosive Licences as well as from the Demand Notice that the District Mining Authority had duly issued explosive licence and made assessment of royalty for stone in respect of the Plot No. 1614, Mouza- Khoirbad, District- Burdwan and as such any further extraction in respect of the said plot by the petitioner for and on behalf of the said Firm cannot be treated to have been without valid approval from the appropriate authority and both the First Information Report, the charge-sheet and the proceeding initiated thereunder are liable to be quashed.
- iii. Rule 35 of the West Bengal Minor Minerals Rules, 2002 has no manner of application in respect of stone quarry and the stone quarry operation done by the petitioner having been carried on for and on behalf of "M/s. J. Das and Brothers" under the aforesaid lease already recognized by the District Mining Authority in the aforesaid licences and notices no allegation of extraction without lease/licence can be raised against the petitioner and the First

Information Report, the charge-sheet and the proceeding initiated thereunder are liable to be quashed.

- iv. Under Entry 54, List – I, seventh schedule of the Constitution of India, read with Section 2 of the Mines and Minerals (Development and Regulation) Act 1957, Central Government being the absolute legislative authority in respect of all minor minerals, State Government, as a delegated rule making authority under the said Act of 1957 has no legislative competence to prohibit the mining operation in an arbitrary manner and in the present case, the First Information Report having been lodged by the District Mining Authority by complete misrepresentation of law and facts, the same is practically a mala-fide attempt to stop/close the lawful mining operation in respect of the plot in question, beyond legislative competence of the State Legislature and both the First Information Report and the Charge-Sheet are liable to be quashed.
- v. Royalty on extraction of stone having been accepted by the State Government for the relevant period, the petitioner had accrued substantive mining right for extraction of stone under the Mines and Minerals (Development and Regulation) Act, 1957 as well as under the West Bengal Minor Mineral Rules, 2002 and after acceptance of such royalty, the district mining authority is stopped in law from treating petitioner's extraction from the plot in question as unauthorized and as such the First Information

Report, the Charge-Sheet and the proceeding initiated thereunder are liable to be quashed.

- vi. The Learned Additional Chief Judicial Magistrate acted illegally and with material irregularity in the exercise of jurisdiction in not holding that both the First Information Report and the Charge-Sheet are misleading, mala-fide, based on misrepresentation of law and fact and suffers from total non-application of mind and do not disclose any offence punishable under Rule 33 (1) of the West Bengal Minor Minerals Rule, 2002 and as such the First Information Report, the Charge-Sheet and the Proceeding initiated thereunder are liable to be quashed.
- vii. The First Information Report and the Charge-Sheet were drawn as misrepresentation of facts and law with a clear mala-fide intention to harass the petitioner and thereby to stop the mining operation by the petitioner and as such both the same are violative of Section 18 of the Mines and Minerals (Development and Regulations) Act, 1957 and do not disclose any offence against the petitioner and the First Information Report, the Charge-Sheet and the Proceeding initiated thereunder are liable to be quashed.

6. The following documents of un-impeachable character are most necessary:

- i. 2nd January, 1977 letter of appointment as contractor and sole selling agent issued by Banerjee Brothers issued in favour of M/s. J. Das and Brothers.

- ii. The explosive licence issued in favour of M/s. J. Das and Brothers by the Additional District Magistrate, Asansol.
 - iii. The order dated 9th March, 1988 passed by the Hon'ble High Court in CO 2097 of 1988. The order clearly reflects that M/s. J. Das and Brothers was permitted to pay royalty for mining operation to the Additional District Magistrate, Asansol and directed renewal of licence on payment of royalty.
 - iv. Pursuant to the aforesaid order, M/s. J. Das and Brothers deposited the royalty till date of the impugned complaint royalties were being regularly paid and accepted by the Government.
 - v. The letters for payment of royalties were submitted by the petitioner.
 - vi. Vide an order dated 27th August, 1990 passed by the Hon'ble High Court in CO No. 10359 of 1990 once again M/s. J. Das and Brothers was permitted to be issued licence by the Hon'ble High Court.
- a. Therefore, the petitioner as a constituted attorney of M/s. J. Das and Brothers as permitted by virtue of the orders passed by this Hon'ble Court as well as by acceptance of royalty by the concerned authority to conduct mining operation and there was no violation of statutory provision.

7. Even otherwise the West Bengal Minor Minerals Rules, 2002 which was enacted under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 shall not apply or affect any mining operation undertaken when such mining is undertaken in accordance with any mining lease granted before the commencement of the Act of 1957 and which is in force during such commencement. Admittedly the Mines and Minerals (Development and Regulation) Act, 1957 came into force on 28.12.1957 and by virtue of proviso to Section 4 of the Act, the Act and the Rules framed thereunder including the West Bengal Minor Minerals Rules, 2002 shall not apply to the mining lease granted by Maharaja of Burdwan in 1942 and the mining operation undertaken pursuant thereto much prior to the commencement of the Act and rules thereto.
8. In the instant case the prosecution alleges the violation of Rule 33 of the West Bengal Minor Minerals Rules, 2002. According to the said Rule, extraction of any minor mineral in contravention of lease and in contravention of Rule 35 of the said Rule is punishable with term of imprisonment of 2 years or with fine which may extend upto rupees twenty five thousand. It is submitted that a notification dated 8th November, 2002 by virtue of which West Bengal Minor Minerals Rules, 2002 (hereinafter said rules) was brought into effect makes it clear that the said rules were enacted by the Government under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. Therefore, any provision of the said rules must draw its power from the segments of rule making powers provide under Section 15 of the said Mines and Minerals (Development and

Regulation) Act, 1957. However, under Section 15(1)A of the Act of 1957 the State Government is not authorized to frame any rule having penal consequence/punishment clause. It is submitted that it is clear from the language of Section 15 that the Rule making power of the State Government is only for application for mining lease and licences and general maintenance of safety and does not empower the State Government to frame rules creating any positive right or imposing any penal liability.

9. Even Section 15 (1) A of the aforesaid Act of which is a generalized clause, any other matter which may be prescribed cannot be read in isolation and overreach the substantive provision. In this regard the petitioner relies upon the judgment of ***Kunj Behari Lal Butail and Ors. Vs. State of H.P. and Ors.***¹, where it has been clearly held that a general delegation and generalized language of rule making power couched under generalized language (similar to 15 1A of the Act of 1957) cannot be exercised so as to bring into existence substantive rights, obligations, disabilities not contemplated in the Act itself. The aforesaid submission is corroborated further by reading of Section 21(2) of 1957 Act (as it existed in the year 2012) makes it abundantly clear that violation of any rule under the Act is punishable by imprisonment of 1 year and fine extendable to Rs.5,000/- or with both. The relevant paragraph of ***Kunj Behari Lal Butail (Supra)*** is given below:-

“13. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall

¹ (2000) 3 SCC 40

within the scope of such general power confirmed. If the rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent act. (See: Sant Saran Lal v. Parsuram Sahu [AIR 1966 SC 1852 : (1966) 1 SCR 335] , AIR para 19.) From the provisions of the Act we cannot spell out any legislative intent delegating expressly, or by necessary implication, the power to enact any prohibition on transfer of land. We are also in agreement with the submission of Shri Anil Divan that by placing complete prohibition on transfer of land subservient to tea estates no purpose sought to be achieved by the Act is advanced and so also such prohibition cannot be sustained. Land forming part of a tea estate including land subservient to a tea plantation have been placed beyond the ken of the Act. Such land is not to be taken in account either for calculating the area of surplus land or for calculating the area of land which a person may retain as falling within the ceiling limit. We fail to understand how a restriction on transfer of such land is going to carry out any purpose of the Act. We are fortified in taking such view by the Constitution Bench decision of this Court in Bhim Singhji v. Union of India [(1981) 1 SCC 166] whereby sub-section (1) of Section 27 of the Urban Land (Ceiling and Regulation) Act, 1976 was struck down as invalid insofar as it imposed a restriction on transfer of any urban or urbanisable land with a building or a portion only of such building which was within the ceiling area. The provision impugned therein imposed a restriction on transactions by way of sale, mortgage, gift or lease of vacant land or buildings for a period exceeding ten years, or otherwise for a period of ten years from the date of the commencement of the Act even though such vacant land, with or without a building thereon, fell within the ceiling limits. The Constitution Bench held (by majority) that such property will be transferable without the constraints mentioned in sub-section (1) of Section 27 of the said Act. Their Lordships opined that the right to carry on a business guaranteed under Article 19(1)(g) of the Constitution carried with it the right not to carry on business. It logically followed, as a necessary corollary, that the right to acquire, hold and dispose of property guaranteed to citizens under Article 19(1)(f) carried with it the right not to hold any property. It is difficult to appreciate how a citizen could be compelled to own property against his will though he wanted to alienate it and the land being within the ceiling limits was outside the purview of Section 3 of the Act and that being so the person owning the land was not governed by any of the provisions of the Act. Reverting back to the case at hand, the learned counsel for the State of Himachal Pradesh has not been able to satisfy us as to how such a prohibition as is imposed by the impugned amendment in the Rules helps in achieving the object of the Act.

14. *We are also of the opinion that a delegated power to legislate by making rules “for carrying out the purposes of the Act” is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.”*

10. Therefore, the substantive provision laying down punishment is already incorporated under Section 21(2) of the Act and the said substantive provision of the statute could not have been overreached by framing of Rule 33 of 2002 Rules subsequently, where not only a disability and liability has been created but a penal consequence (two years imprisonment) contrary to the substantive provision was also created. Hence, Rule 33(1) of the said rules is *ultra vires* of Section 15 and Section 21 of the Act of 1957.
11. In this regard the petitioner relied upon a judgment rendered in the case of ***NCK Tourist Home Private Limited Vs. Kozhikode Nagar Sabha***², in the aforesaid case it was decided that when the substantive provision provided for a particular period the said period cannot be altered, lessened or enhanced by framing a rule. Rule is a piece of delegated legislation and cannot override the substantive statute. The relevant paragraphs are provided for below:-

“3. As it is clear from the above, the notice for revising the property tax was given before the expiry of five years of the period. The appellant herein challenged this notice, taking shelter under Section 238 of the Kerala Municipalities Act, 1994 (hereinafter referred to as “the Act”), with the contention that it was not permissible for the respondent authorities to make any revision in the property tax before the expiry of five years. This contention is not accepted, notwithstanding the existence of a categorical stipulation to this effect in Section 238 of the Act inasmuch as the High Court has fallen back to Rule 2-A of the Taxation Rules which were made under the earlier enactments viz. the Kerala Municipalities Act, 1960 and the Municipal Corporations Act, 1961. For proper understanding of the matter, we reproduce hereinbelow Section 238 of the Municipalities Act, 1994 as well as Rule 2-A of the Taxation Rules:

² (2016) 13 SCC 265

“238. Revision and time of payment of property tax.— Subject to the rules made by Government the property tax shall be assessed and the half-yearly tax determined once in every five years and the half-yearly tax shall be payable by the owner of the assessed property within thirty days of the commencement of the each half year:

Provided that except in the case of substantial improvements or addition to an existing building since the last assessment, the annual value of any building shall not exceed the limit, if any, fixed by the Government from time to time:

Provided that revision of tax after date of first April, 1998, shall come into force on the date fixed by the Government.”

* * *

“2-A. (i) *If at any time it appears to the Standing Committee that any person or property has been inadequately assessed or inadvertently or improperly omitted from the assessment books relating to any tax, arithmetical error in the said books, it may direct the Commissioner to amend the said books in such manner as it deems just or necessary:*

Provided that such direction shall be given where it involved an increase in the assessment, unless the person concerned shall have been afforded a reasonable opportunity to show cause to the Standing Committee why the assessment books should not be amended as proposed.

(ii) *Such amendment shall be deemed to have taken effect on the earliest date, either in the current half year or in the two half years immediately preceding it, on which the circumstances justifying the agreement existed.”*

4. *As per the High Court, since the provisions of Section 238 are “subject to the Rules made by the Government”, and as Rule 2-A prescribes the period of two half years for revising the property tax, the show-cause notice issued was valid in law. It is difficult to countenance the aforesaid rationale given by the High Court. No doubt, Section 238 is subject to the Rules that can be made by the Government. However, those Rules contemplate the procedure that is to be followed while making assessment. In any case, when there is a substantive provision made in Section 238 to the effect that the tax shall be assessed once in every five years, Rule 2-A which lays down lesser period is clearly contrary to the aforesaid substantive provisions of Section 238 of the enactment and, therefore, it will have to be treated as ultra vires the provisions of Section 238 as*

mentioned above. Rule 2-A was framed under the old Kerala Municipalities Act. After coming into force of the new Act i.e. the Kerala Municipalities Act, 1994 with the provisions of the kind mentioned above i.e. Section 238 of the Act, to the extent Rule 2-A is contrary to the aforesaid provisions, it has to be held as contrary to the substantive provisions and not effective at all.”

12. It is more pertinent to note that the West Bengal Minor Minerals Rules, 2002 has been repealed in the year 2016. It is also pertinent to note that under Section 28(3) of the Act of 1957 every Rule or notification under the said Act including the 2002 Rules must be laid as soon as after the same is made before the legislature of the State. Therefore it is only when a rule framed under the act of 1957 is placed before the State Legislature after being framed it would have sanction of law but before its repeal in the year 2016. During the whole period since 2002 when the West Bengal Minor Minerals Rules 2002 was brought into force, the Rules of 2002 was never placed before the Legislative Assembly and therefore in the year 2012 when the impugned prosecution was initiated invoking the said rule, it did not have sanction of law. Therefore the Rule apart from being *ultra vires* of the Act of 1957 is also otherwise inapplicable. Therefore rule 33(1) and its applicability is liable to be totally discarded in the eyes of law.
13. With regard to applicability of Section 379 of the Indian Penal Code it is submitted that charge against the Petitioner is not theft but according to the complainant is mining without approval from the competent authority which has already exhibited hereinabove by the Petitioner as palpably incorrect allegation. It is trite law that when a special statute provides for a penal consequence for a particular act or omission the general penal statute must

yield to the special statute. It is also trite that a latter enactment brought as a special law shall prevail over earlier general enactment. In this regard reliance was placed upon a judgment rendered in the case of **Sharad Babu Digumarti Vs. Government (NCT of Delhi)**³, the Hon'ble Supreme Court clearly held that Section 92 of the Indian Penal Code which provides for punishment for sale obscenity in books pamphlets papers, drawings etc shall not be applicable once Section 67 of Information and Technology Act came into force and made obscenity in electronic records punishable.

“37. The aforesaid passage clearly shows that if legislative intendment is discernible that a latter enactment shall prevail, the same is to be interpreted in accord with the said intention. We have already referred to the scheme of the IT Act and how obscenity pertaining to electronic record falls under the scheme of the Act. We have also referred to Sections 79 and 81 of the IT Act. Once the special provisions having the overriding effect do cover a criminal act and the offender, he gets out of the net of IPC and in this case, Section 292. It is apt to note here that electronic forms of transmission are covered by the IT Act, which is a special law. It is settled position in law that a special law shall prevail over the general and prior laws. When the Act in various provisions deals with obscenity in electronic form, it covers the offence under Section 292 IPC.

38. *In Jeewan Kumar Raut v. CBI [Jeewan Kumar Raut v. CBI, (2009) 7 SCC 526 : (2009) 3 SCC (Cri) 475] , in the context of the Transplantation of Human Organs Act, 1994 (TOHO) treating it as a special law, the Court held: (SCC p. 537, paras 22-23)*

“22. TOHO being a special statute, Section 4 of the Code, which ordinarily would be applicable for investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation, inquiry, trial, etc. according to the provisions of the Code. Sub-section (2) of Section 4, however, specifically provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time

³ (2017) 2 SCC 18

being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences.

23. TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code.”

And again: (SCC p. 538, para 27)

“27. The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 of TOHO.”

14. Reliance is also placed on the case of **Jeewan Kumar Raut & Anr vs. Central Bureau Of Investigation**⁴, where the Hon’ble Supreme Court considered the provisions of Transplantation of Human Organs Act 1994 (TOHO) vis a vis Section 4(2) of the Code of Criminal Procedure and held that TOHO. Being a special Act and the matter relating to dealing with offences there under having been regulated by the provision of the said Act. There cannot be any manner of doubt that the relatable penal provisions of the general code. The same principle applies to the provisions of the Act of 1957 vis a vis the general provision of Section 379 of the Indian Penal Code. Even otherwise unauthorised mining does not make out the ingredients of the Section 379 of Indian Penal Code.

“22. TOHO being a special statute, Section 4 of the Code, which ordinarily would be applicable for investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation,

⁴ 2009 (7) SCC 526

inquiry, trial, etc. according to the provisions of the Code. Sub-section (2) of Section 4, however, specifically provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences.

23. *TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code. The investigation in terms of Section 13(3)(iv) of TOHO, thus, must be conducted by an authorised officer. Nobody else could do it. For the aforementioned reasons, the officer in charge of Gurgaon Police Station had no other option but to hand over the investigation to the appropriate authority.*

27. *The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 of TOHO.”*

15. The aforesaid reports are also relied upon to submit before this Hon’ble Court that when the special statute being Mines and Minerals (Development and Regulation) Act 1957 debars cognizance by any court except for a complaint directly laid before the court by an authorized person specially authorized in this regard by the Central Government or the State Government, then cognizance could not have been taken on basis of police report. Section 22 of the Act of 1957 shall have overriding effect. Therefore the order taking cognizance and the charge sheet is bad in law.

16. It is interesting to note that neither the Act of 1957 nor Rule of 2002 notify whether the offences are cognizable and non cognizable in nature. In such a

circumstances, the Schedule II of the Code of Criminal Procedure shall be applicable which prescribes classification in respect of offences against “other laws” except for Indian Penal Code, and under such schedule in respect of such offences punishable with imprisonment of less than three years, such offence is deemed to be non cognizable and bailable. In such circumstance both Section 21(2) of the Act of 1957 or Rule 33 of the said Rules are non cognizable in nature and since it is palpable that Section 379 of the Indian Penal Code is not applicable being overridden and otherwise the police authorities could not have assumed jurisdiction at all and charge sheet could not have been submitted. Therefore the First Information Report and charge sheet is bad in law and are liable to be quashed.

17. The petitioner relied upon judgment delivered in the case of ***Rukmini Narvekar vs. Vijaya Satardekar & Ors.***⁵, which makes it abundantly clear that while exercising the powers under Section 482 of Code of Criminal Procedure the Hon’ble High Court is entitled to go through all documents relied upon by the defence.

18. In the facts and circumstances as stated above the petitioners pray for quashing of the impugned FIR and charge-sheet.

19. The Learned Advocate for the State submits as follows:-

It has been argued by the petitioner that offences under the Mines and Minerals Act are non-cognizable and hence the present proceeding was wrongly instituted. It was further argued that if offences under special

⁵ 2009 1 SCC(Cri) 721

Statutes were not attracted consequently Penal Code offences could not continue.

20. Mining without license or permit attracted an offence of theft punishable under section 378 and 379 of the Indian Penal Code in addition to provisions of Mines and Minerals (Development and Regulation) Act, 1957. The ingredients of theft were distinct and different from ingredients of illegal mining. Hence provisions content under Section 22 Mines and Minerals (Development and Regulation) Act, 1957 against prosecution of the person except on a complaint made by officer authorized under the Act is attracted only when such a person sought to be prosecuted for contravention of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957. Such provision does not apply for any act or omission which constitutes an offence under the Indian Penal Code like theft defined under Section 378 of the Indian Penal Code. Hence there is no merit in the contention that where there is a Special Act dealing with a special subject, resort cannot be taken under the General Act. The said submission by the petitioner has no force as in terms of Section 26 of the General Clauses Act, the offence under Section 4 read with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 is different from the Section 379 of the Indian Penal Code. Thus they are two “different” and not the “same” offences.

21. It has been argued by the petitioner that police has no power to institute cases on the basis of an FIR and Magistrate has no power to take cognizance

of such offence upon police report without a complaint being registered from an authorized officer in accordance to the Section 22 of the Act.

22. In this regard reference may be made to Chapter XI of the Code of the Criminal Procedure especially from Section 149 to 152 which confers important powers and duty upon the police officer to take preventive actions in certain cases. A perusal of the aforementioned provisions would show that a police officer of his own authority has the duty to prevent any injury attempted to be committed to any public property or National assets and to prosecute such persons in accordance of law.
23. There is no complete and absolute bar in the Mines and Minerals (Development and Regulation) Act, 1957 in prosecuting persons under the Penal Code where the offences are committed by persons are Penal and Cognizable offences. It is pertinent to mention here sub Section 6 has been inserted in Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 by amendment on and from 20.12.1999 making the offence cognizable notwithstanding anything in the Cr.P.C.
24. Section 22 of the Act puts a restriction on the court to take cognizance of the offence punishable under the Act or to Rule made there under except upon a complaint made by a person authorized in this behalf. It is very important to note that Section 22 does not begin with a non-obstante clause. Instead of the words "Notwithstanding anything content in any law for the time being in force, no court shall take cognizance...", the Section begins with words "No court shall take any cognizance of any offence."

25. It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Absence of such non obstante clause in respect of Section 4(1-A), 21 and 22 clarifies the legislative intention that relevant provisions of the Code of the Criminal Procedure will apply and as such there is no bar in either institution of the criminal case by an FIR or cognizance of a court upon police report.
26. If we consider Section 2(c), 2(d), 2(h) which define “cognizable offence”, “complaint”, “investigation” respectively as well as Section 4(2) of the Code of Criminal Procedure which tell that all offences under any law other than Indian Penal Code, can be investigated, enquired into and tried under Code of the Criminal Procedure, subject to any enactment regulating the manner or place of investigation, trial etc of such offences. Further, Section 41 of the Code of Criminal Procedure states that police has the power to arrest without warrant in case of cognizable offence. Section 149 to 152 require the police to prevent cognizable offence either by arrest or otherwise. The aforesaid provision clearly casts a duty upon the police officer to prevent any injury attempted to be committed to any public property or National assets and also to prosecute such person in accordance with law.
27. In addition to the aforesaid argument it is submitted that Section 33 of the Rules which deals with the provisions of penalty in connection with the aforesaid offences :-

Section 33(1) reads as follows : Any person extracting any Minor Mineral without a proper lease or permit granted under this rules or in contravention of the provisions of rule 35 shall be punishable with a term of with imprisonment for a term which may extent to two years or with a fine which may extent to Rs. 25,000/- or both.

Section 33(8) reads as follows :- Notwithstanding anything content in the Code of the Criminal Procedure, an offence under sub Section (1) shall be cognizable. In the instant case the F.I.R. was lodged by the concerned BL&LRO after the same was duly authorized by the competent authority, i.e., Additional District Magistrate and District Land and Land Reforms Officer. Hence it is crystal clear that there is no bar in taking cognizance when an offence under Minor Mineral Rules as well as the Penal Code is attracted

28. In the backdrop of the aforesaid discussion it may be concluded that ingredients constituting offence under Mines and Minerals (Development and Regulation) Act, 1957 and offences defined under Section 379 of the Indian Penal Code are absolutely different. The contravention of the terms and conditions of the mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, whereas dishonestly removing stones and other minerals (which is the allegation in this present case) which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence initiation of proceeding for commission of an offence under Mines and Minerals (Development and

Regulation) Act, 1957 on the basis of complaint cannot and shall not debar police from taking action against the persons for committing theft of stones exercising the power conferred under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. So in such cases the police can register a case, investigate the same and submit a final report under Section 173 of the Code of the Criminal Procedure before the Magistrate having the jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(D) of the Code of the Criminal Procedure.

29. In this regard reference may be made to the decisions made by Hon'ble Apex Court in

- i. State (NCT of Delhi) Vs. Sanjay reported in (2014) 9 Supreme Court Cases 772, relevant paras 27,30,31, 62-63, 69-73 and in

27. Looking into the provisions the Code of Criminal Procedure, 1973 the relevant provisions need to be referred hereunder. Section 2(c), 2(d) and 2(h) define cognizable offence, complaint and investigation which reads as under:

2(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

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.

2(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf;

Chapter 11 of the Code confers very important power and duty upon the police officer to take preventive action in certain cases. Sections 149, 150, 151 and 152 of the Code are worth to be referred to and quoted hereinbelow:

149. Police to prevent cognizable offences-Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

150. Information of design to commit cognizable offences-Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

151. Arrest to prevent the commission of cognizable offences-(1) A police officer, knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested Under Sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or any other law for the time being in force.

152. Prevention of injury to public property.-A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

31. Perusal of aforementioned provisions would show that a police officer of his own authority has the duty to prevent any injury attempted to be committed to any public property or national assets and to prosecute such person in accordance with law.

62. *Sub-section (1-A) of Section 4 of the MMDR Act puts a restriction in transporting and storing any mineral otherwise than in accordance with the provisions of the Act and the Rules made thereunder. In other words no person will do mining activity without a valid lease or licence. Section 21 is a penal provision according to which if a person contravenes the provisions of sub-section (1-A) of Section 4, he shall be prosecuted and punished in the manner and procedure provided in the Act. Sub-section (6) has been inserted in Section 4 by amendment making the offence cognizable notwithstanding anything contained in the Code of Criminal Procedure, 1973. Section 22 of the Act puts a restriction on the court to take cognizance of any offence punishable under the Act or any Rule made thereunder except upon a complaint made by a person authorised in this behalf. It is very important to note that Section 21 does not begin with a non obstante clause. Instead of the words “notwithstanding anything contained in any law for the time being in force no court shall take cognizance....”, the section begins with the words “no court shall take cognizance of any offence.”*

63. *It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same*

enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.

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 riverbed. 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 ecosystem of the rivers and safety of bridges. It also weakens riverbeds, 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 groundwater 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 authorised 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 authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the 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 is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.

71. However, there may be a situation where a person without any lease or licence or any authority enters into river and extracts sand, gravel 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 liable to be punished for committing such offence under Sections 378 and 379 of the 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.

73. *After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the 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 IPC. Hence, for the commission of offence under Section 378 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. 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 Magistrates concerned to proceed accordingly.”*

ii. Kanwar Pal Singh Vs. State of Uttar Pradesh & Anr. reported in (2020)

14 Supreme Court Cases 331, relevant paras 6, 7, 10, 11, 15, 16 which clearly distinguishes/overrides the legal points argued by the petitioner and the decisions cited in that regard.

6. *After adverting to the provisions of CrPC, namely, Sections 2(c), 2(d) and 2(h) which define “cognizable offence”, “complaint” and “investigation” respectively, this Court in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] had referred to Section 4 CrPC, which reads as under:*

“4. Trial of offences under the Indian Penal Code and other laws.—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

As per sub-section (2) of Section 4, all offences under any law, other than IPC, can be investigated, inquired into and tried under CrPC, subject to any enactment regulating the manner or place of investigation, trial, etc. of such offences.

7. Section 21 of the MMDR Act, 1957, it was observed in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]*, states that the offences specified thereunder are cognizable. Section 41 CrPC was referred to elucidate that the police has the power to arrest without warrant in case of cognizable offences. Sections 149 to 152 of Chapter XI CrPC that require the police to prevent cognizable offences either by arrest or otherwise, etc. were referred to hold that the aforementioned provisions show that a police officer of his own authority has the duty to prevent any injury attempted to be committed to any public property or national assets and also to prosecute such persons in accordance with law.

10. Elucidating on the provisions of Section 4 read with Sections 21 and 22 of the MMDR Act, 1957 and the offence under Section 379 IPC, it was observed in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]* : (SCC pp. 811-12, paras 69-72)

“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 riverbed. 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 ecosystem of the rivers and safety of bridges. It also weakens riverbeds, 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 groundwater 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 authorised 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 authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the 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 is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.

71. However, there may be a situation where a person without any lease or licence or any authority enters into river and extracts sand, gravel 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 liable to be punished for committing such offence under Sections 378 and 379 of the 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) CrPC.”

(emphasis supplied)

11. As noticed above, in the written submissions the appellant has relied upon *Belsund Sugar Co. Ltd. [Belsund Sugar Co. Ltd. v. State of Bihar, (1999) 9 SCC 620]*, *Sharat Babu Digumarti [Sharat Babu Digumarti v. State (NCT of Delhi), (2017) 2 SCC 18 : (2017) 1 SCC (Cri) 628]* and *Suresh Nanda [Suresh Nanda v. CBI, (2008) 3 SCC 674 : (2008) 2 SCC (Cri) 121]* to contend that where there is a special Act dealing with a special subject, resort cannot be taken to a general Act. The said submission has no force in view of the ratio in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]* as quoted above which specifically refers to Section 26 of the General Clauses Act and states that the offence under Section 4 read with Section 21 of the MMDR Act, 1957 is different from the offence punishable under Section 379 IPC. Thus, they are two “different” and not the “same offence”. It would be relevant to state here that the Delhi High Court in its decision in *Sanjay v. State [Sanjay v. State, 2009 SCC OnLine Del 525 : (2009) 109 DRJ 594]*, which was impugned in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]*, had accepted an identical argument to hold that once an offence is punishable under Section 21 of the MMDR Act, 1957, the offence would not be punishable under Section 379 IPC. This reasoning was rejected by this Court and the judgment of the Delhi High Court was reversed. The contention relying on the same reasoning before us, therefore, must be rejected.

15. We would again advert to the decision in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]*, which had overruled the decision of the Calcutta High Court in *Seema Sarkar v. State [Seema Sarkar v. State, 1994 SCC OnLine Cal 277 : (1995) 1 Cal LT 95]* wherein the High Court held the proceedings to be invalid and illegal as the Magistrate had taken cognizance on the basis of a charge-sheet submitted by the police under Section 21(2) of the MMDR Act, 1957 and Section 379 IPC, observing that the cognizance was one that cannot be split or divided. The High Court had further observed that as the complaint was not made in terms of Section 22 of the MMDR Act, 1957, the cognizance was bad and contrary to law. We have already noted the decision of the Delhi High Court which had directed that FIR should not be treated as registered under Section 379 IPC but only under Section 21 of the MMDR Act, 1957. These decisions of the Calcutta High Court and the Delhi High Court were reversed and set aside by this Court in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]* after referring to Section 26 of the General Clauses Act and the meaning of the expression “same offence”,

to observe that the offence under Section 21 read with Section 4 of the MMDR Act, 1957 and Section 379 IPC are different and distinct. The aforesaid reasoning compels us to reject the contention of the appellant that the action as impugned in the FIR is a mere violation of Section 4 which is an offence cognizable only under Section 21 of the MMDR Act, 1957 and not under any other law. There is no bar on the court from taking cognizance of the offence under Section 379 IPC. We would also observe that the violation of Section 4 being a cognizable offence, the police could have always investigated the same, there being no bar under the MMDR Act, 1957, unlike Section 13(3)(iv) of the TOHO Act.

16. *In view of the aforesaid discussion, we would uphold the order of the High Court refusing to set aside the prosecution and cognizance of the offence taken by the learned Magistrate under Section 379 IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. We would, however, clarify that prosecution and cognizance under Section 21 read with Section 4 of the MMDR Act, 1957 will not be valid and justified in the absence of the authorisation. Further, our observations in deciding and answering the legal issue before us should not be treated as findings on the factual allegations made in the complaint. The trial court would independently apply its mind to the factual allegations and decide the charge in accordance with law. In light of the aforesaid observations, the appeal is partly allowed, as we have upheld the prosecution and cognizance of the offence under Section 379 IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. There would be no order as to costs.*

30. The Learned Advocate for the Petitioner in reply to the contentions of the Learned Advocate for the State further submitted the following:

- i. During the course of argument, the Learned Advocate representing the State has raised a point pertaining to Rule 33 Sub Rule 8 of the West Bengal Minor Mineral Rules, 2002. According Rule 8, an offence under Rule 33(1) cognizable; hence, the Charge Sheet could have been submitted by the Investigating Agency in relation to the said Rules. However, Rule 33 Sub Rule 1 shall not be applicable in contradiction to Section 21 (2) of the 1957 Act (as it existed in the

year 2014), which makes it abundantly clear that violation of any rule under the Act is punishable by imprisonment of 1 year and fine extendable to Rs 5,000/- (Rupees Five Thousand) or with both.

- ii. The said Rule framed under the MMDR Act could not have enhanced the punishment to 2 (two) years by Rule 33 Sub Rule 1 of the Sub Rule 1 of the Minor Mineral Rules. Hence, if Rule 33 Sub Rule 1 is liable to be struck down and not given effect to, consequentially Sub Rule 8 of Rule 33 must be construed to have been not applicable in as much as Sub Rule 8 only makes Sub Rule 1 of Rule 33 cognizable. If Rule 33 (1) is inapplicable, Rule 33 (8) can also not be applied.
- iii. In the facts and circumstances as Section 21 of the MMDR Act makes it abundantly clear that violation of any rule under the Act is punishable by imprisonment of 1(one) year, the relevant schedule of the Code of Criminal Procedure will apply and will make Rule 33 of West Bengal Minor Mineral Rules, 2002 non cognizable. The said relevant schedule of the Code of Criminal Procedure is as follows :

II Classification of offences against other Laws :-

Offence	Cognizable or non- cognizable	Bailable or non- bailable	By what Court triable
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If punishable with death, imprisonment for life, or imprisonment for more than 7 years,	Cognizable	Non-bailable	Court of Sessions
If punishable with, imprisonment for 3, and upwards but not more than 7 years	Cognizable	Non-bailable	Magistrate of First Class
If punishable with, imprisonment for less than 3 years or with fine only.	Non Cognizable	Bailable	Any Magistrate

Furthermore, reference may be made to Section 22 of MMDR Act which provides that no court shall take cognizance of any offence punishable under the Act or any rules framed thereunder except upon complaint in writing made by a person authorized in this behalf by the Central or State Government.

- iv. Hence by necessary implication, the Charge Sheet submitted under Rule 33 Sub Section 1 is liable to be quashed.
- v. The Petitioner relies upon Chotelal Choudhury Vs. The State of West Bengal and Ors. (2008(3) CHN 1060) to substantiate that when the Special Statute being the MMDR Act covers the issue of illegal

excavation of minor minerals, usage of section 379 as an ancillary offence will be a misnomer and shall not be applicable. This is in addition to the submission of the petitioner made referring to Sharad Babu Digamarti Vs. Government NCT of Delhi (2017 (2) SCC 18) relevant paragraph 37 and 38.

31. At the outset, the following provisions are worth mentioning:-

32. Rule 33(1) of the West Bengal Minor Mineral Rules, 2002 states as follows:

***“Penalty-** Any person extracting any minor mineral without a proper lease or permit granted under these rules or in contravention of the provisions of rule 35 shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to twenty five thousand rupees or both.”*

33. Rule 35 of the West Bengal Minor Mineral Rules, 2002 states as follows :

***“Extraction of ordinary clay from own land-** No lease will be required to be taken by a person, who extracts ordinary clay from his own land, either for use in any cottage industry owned by him, like pottery, clay modelling or for any other industry specified in the notification issued by the State Government or for his personal use.*

Provided that such extraction shall be subject to the following conditions, as the State Government may impose from time to time:-

(a) The mineral so extracted shall not be disposed of by sale or otherwise without the prior permission in writing of the District Magistrate or District Land and Land Reforms Officer of the district, or Sub-divisional Officer or Sub-divisional Land and Land Reforms officer of the sub-division and except on payment of fees at the rate of Re. 12/- (Rupees Twelve only)

per cubic metre or at such reduced rate as may be fixed by the officer concerned.

(b) The mineral so extracted shall not be converted into bricks or tiles except where such bricks and tiles are required for his own use ;

(c) No extraction shall be done at or from any place within 100 metres from any railway line, except with the previous written permission of the railway administration concerned or within 200 metres from any reservoir, public road, canal, bridge culvert or other public works or buildings or inhabited site.”

34. Definition of “**Owner**” under Mines Act, 1952(35 of 1952) state as follows :

“ (i) Owner when used, in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by liquidator or receiver such liquidator or receiver but does not include a person who merely receives a royalty rent or fine from the mine, subject to any lease grant or licence for the working thereof or is merely or is merely the owner of the soil and not interested in the minerals of the mine; but (any contractor or sub-lessee for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability.”

35. Two separate police station cases were initiated against the present petitioner being Barabani P.S. Case No. 130/12 dated 13.10.2012 under Section 33(1) of the West Bengal Minor Minerals Rules, 2002 and another case being Barabani P.S. Case No. 9/2014 dated 11.01.2014 under Section 33(1) of the West Bengal Minor Minerals Rules, 2002 and under Section 379 of the Indian Penal Code.

36. Barabani Case No. 130 of 2012 was initiated on the basis of a written complaint lodged by Nazim Ali Mufti (The BL&LRO) who was duly authorized by the Additional District Magistrate and District Land and Land Reforms Officer, Burdwan as per his letter of instruction vide Memo No. 2162/MM/12 as the petitioner was involved in mining operation in Plot No. 1614 without any valid approval from the competent authority.
37. In connection with Barabani P.S. Case No. 130 of 2012, three statements of witnesses namely Shyamol Majhi, Laksmallal Tudu and Nazim Ali Mufti (BL&LRO) were recorded wherein it was alleged that the present petitioner is illegally carrying on mining activities in Plot No. 1614.
38. After completion of the investigation the charge-sheet under Section 33(1) of the West Bengal Minor Minerals Rules, 2002 was filed against the present petitioner.
39. Similarly Barabani P.S. Case No. 9/2014 was initiated on the basis of a written complaint lodged by Shyamol Mondol (The BL&LRO) who was duly authorized by the Additional District Magistrate and District Land and Land Reforms Officer, Burdwan as per his letter of instruction vide Memo No. 14(stone/1030/MM/13) as the petitioner was involved in mining operation in Plot No. 1614 without any valid approval from the competent authority.
40. In connection with Barabani P.S. Case No. 9/14 two statements of witnesses namely Md. Ilias (Amin, BL&LRO) and Pronob Kumar Mishra (Revenue Officer, BL&LRO) were recorded wherein it was alleged that the present petitioner is illegally carrying on mining activities and after committing theft is selling the same in the black-market.

41. After completion of the investigation the charge-sheet under Section 33(1) of the West Bengal Minor Minerals Rules, 2002 and under Section 379 of the Indian Penal Code was filed against the present petitioner.
42. The submission of the petitioner to have been authorized by virtue of power of attorney by the surviving partner M/S J Das and Brothers to have been legally entrusted to supervise and conduct mining operations in respect of 1614 within Mouza- Khoirbad is the first issue to be determined through proper evidence in court. The right of mining over the said plot through legal sanction has to be justified by the petitioner by adducing evidence before the court.

The Learned Advocate for the petitioner has submitted that following documents to be of unimpeachable character.

- i. 2nd January, 1977 letter of appointment as contractor and sole selling agent issued by Banerjee Brothers issued in favor of M/s. J Das and Brothers.
- ii. The explosive license issued in favor of M/s. J. Das and Brothers by the Additional District Magistrate, Asansol.
- iii. The order dated 9th March, 1988 passed by the Hon'ble High Court in CO 2097 of 1988. The order clearly reflects that M/s. J. Das and Brothers was permitted to pay royalty for mining operations to the Additional District Magistrate, Asansol and directed renewal of license on payment of royalty.

- iv. Pursuant to the aforesaid order, M/s. J. Das and Brothers deposited the royalty till date of the impugned complaint royalties were being regularly paid and accepted by the Government.
 - v. The letters for payment of royalties were submitted by the petitioner.
 - vi. Vide an order dated 27th August 1990 passed by the Hon'ble High Court in CO No. 10359 of 1990 once again M/s J. Das and Brothers was permitted to be issued license by the Hon'ble High Court
43. However the perusal of the 'xerox copies' of documents annexed to the instant revisional application reveals the petitioner to have claimed his ownership complaint and materials in the case diary.
44. The veracity of the aforesaid documents cannot be decided without adducing evidence in court. There are several writ petitions before this Court concerning the right to quarry stones and minerals over several plots however it has been claimed that plot 1614 as aforesaid was unblemished. However, such a claim of the petitioner has to be established on adducing proper evidence. The mining of stones and minerals have been carried for a prolonged period within its inception prior to the independence. This Court while exercising its power under Section 482 of the Cr.P.C. is not in a position to conduct a mini trial; assessing facts beyond the limit and purview of the pleadings.
45. Further during the course of investigation the petitioner could not produce the initial document granting lease which was allegedly granted pre-independence as well as the latest renewal documents. Hence, whether or

not he actually had any valid permission to continue mining activities is a question of fact that has to be decided during the course of trial.

46. In the case of **Central Bureau of Investigation VS. Aryan Singh etc.**⁶, the Hon'ble Supreme Court held as follows:-

“10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

11. One another reason pointed by the High Court is that the initiation of the criminal proceedings/proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High

⁶ 2023 SCC OnLine SC 379

Court. That thereafter, on conclusion of the investigation, the accused persons have been chargesheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings/proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.

12. In view of the above and for the reasons stated above, when the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings, the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and the same deserves to be quashed and set aside.”

47. In the case of **Amit Kapoor Vs. Ramesh Chander and Another**⁷, the Hon’ble Supreme Court has observed as follows:-

“22. In Dinesh Dutt Joshi v. State of Rajasthan⁸ the Court held that:

“6. ...[Section 482] does not confer any power but only declares that the High Court possesses inherent powers for the purposes specified in the Section. As lacunae are sometimes found in procedural law, the Section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are, however, required to be reserved as far as possible for extraordinary cases.

⁷ (2012) 9 SCC 460

⁸ (2001) 8 SCC 570

23. In *Janata Dal v. H.S. Chowdhary*⁹ the Court, while referring to the inherent powers to make orders as may be necessary for the ends of justice, clarified that such power has to be exercise in appropriate cases *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the powers requires a great caution in its exercise. The High Court, as the highest court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes of securing the ends of justice. Being an extra ordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers.

24. If one looks at the development of law in relation to exercise of inherent powers under the Code, it will be useful to refer to the following details :as far back as in 1926, a Division bench of this Court in *Llewelyn Evans, In re*¹⁰ took the view that the provisions of Section 561A (equivalent to present Section 482) extend to cases not only of a person accused of an offence in a criminal court, but to the cases of any person against whom proceedings are instituted under the Code in any Court. Explaining the word “process”, the Court said that it was a general word, meaning in effect anything done by the Court. Explaining the limitations and scope of Section 561A, the Court referred to “inherent jurisdiction”, “to prevent abuse of process” and “to secure the ends of justice” which are terms incapable of having a precise definition or enumeration, and capable, at the most, of test, according to well-established principles of criminal jurisprudence. The ends of justice are to be understood by ascertainment of the truth as to the facts on balance of evidence on each side. With reference to the facts of the case, the Court held that in the absence of any other method, it has no choice left in the

⁹ (1992) 4 SCC 305

¹⁰ AIR 1926 Bom 551

application of the Section except, such tests subject to the caution to be exercised in the use of inherent jurisdiction and the avoidance of interference in details and directed providing of a legal practitioner.”

48. In the aforesaid case, the Hon’ble Supreme Court further observed as follows:-

“27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. *The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*

27.4. *Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.*

27.5. *Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.*

27.6. *The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.*

27.7. *The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.*

27.8. *Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.*

27.9. *Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*

27.10. *It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.*

27.11. *Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.*

27.12. *In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.*

27.13. *Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.*

27.14. *Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.*

27.15. *Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.*

27.16. *These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual*

foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence.

28. At this stage, we may also notice that the principle stated by this Court in the case of Madhavrao Jiwaji Rao Scindia¹¹ was reconsidered and explained in two subsequent judgments of this Court in the cases of State of Bihar v. Shri P.P. Sharma and M.N. Damani v. S.K. Sinha. In the subsequent judgment, the Court held that, that judgment did not declare a law of universal application and what was the principle relating to disputes involving cases of a predominantly civil nature with or without criminal intent.”

49. In the case of **Gulam Mustafa vs. State of Karnataka and Anr.**¹² the Hon’ble Supreme Court observed as follows :

“26. Although we are not for verbosity in our judgments, a slightly detailed survey of the judicial precedents is in order. In State of Haryana v Bhajan Lal, 1992 Supp (1) SCC 335, this Court held:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

¹¹ (1988)1 SCC 692

¹² 2023 SCC OnLine SC 603

- (1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance*

on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

27. This Court, in S W Palanitkar v State of Bihar, (2002) 1 SCC 24, held:

“... whereas while exercising power under Section 482 Cr.P.C. the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under Cr.P.C., or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 Cr.P.C. should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under Section 482 Cr.P.C. to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred.”

28. In *State of Karnataka v M Devendrappa*, (2002) 3 SCC 89, it was decided:

*“6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of*

justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

29. *In Uma Shankar Gopalika v State of Bihar, (2005) 10 SCC 336, at Para 7 thereof, it was held that when the complaint fails to disclose any criminal offence, the proceeding is liable to be quashed under Section 482 of the Code:*

“In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 Code which it has erroneously refused.”

30. *The law on the subject was also examined in Parbatbhai Aahir v State of Gujarat, (2017) 9 SCC 641. In Habib Abdullah Jeelani, (2017) 2 SCC 779, it was opined:*

“inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself There is no denial of the fact that the power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court.”

50. In **Arnab Manoranjan Goswami Vs. State of Maharashtra and Anr.**¹³, the Hon’ble Supreme Court held as follows:

“Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognizes the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of the CrPC—or prevent abuse of the process of any Court or otherwise to secure the ends of justice. Decisions of this court require the High (2005) 8 SCC 21 (2010) 14 SCC 496 (2012) 1 SCC 40 Criminal Appeal No. 1605 of 2019 decided on 22 October 2019 PART J Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one – and a significant – end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure of 1898 was enacted by a legislature which was

¹³ (2021) 2 SCC 427

not subject to constitutional rights and limitations; yet it recognized the inherent power in Section 561A. Post- Independence, the recognition by Parliament³⁷ of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being Section 482 of the CrPC 1973 PART J made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of

(and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.”

51. The authorized appointment of ‘M/s J.Das and Brothers’ as a contractor and sole selling agent of the stone mines and subsequent grant of power of attorney to the present petitioner without documentary evidence being adduced cannot be considered to be sacrosanct and legally valid proposition to have bestowed legal right upon the petitioner to quarry stones and minerals through grant of valid licence.

52. The renewal of licence from time to time along with execution of deed of agreement thereto requires to be proved to eradicate the scope of allegations against the petitioner.

53. Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 states as follows :

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.

54. The petitioner claimed to have paid the royalty and explosive licence was issued. Several writ petitions were filed and subsequent directions were issued by this Hon’ble Court. Several other writ petitions are pending for adjudication. Mere statement in the petition absolving the petitioner not to be directly involved in the dispute would not convince this Court to determine the innocence of the petitioner where an allegation had been raised by Govt. servants in the instant case in official capacity through valid authorization being aware that falsification of facts will enure perjury against them. This Court under the provisions of Sections 482 Cr.P.C. cannot hold a

mini trial and reach a definitive conclusion in exclusion of recording of evidence.

55. Article 256 of the Constitution of India is as follow:

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State

56. The following law was laid down in *Union of India v. Manjurani Routray*,

(2023) 9 SCC 144 : 2023 SCC

7. *We have perused the averments made in the original application filed before CAT on 22-4-2001 and the relief as prayed, by which it is apparent that Rule 4(b) of the Rules was not under challenge because the original application was filed prior to notifying the Rules vide office Memorandum dated 6-8-2001. For ready reference, prayer made in the original application is reproduced as under:*

“It is therefore humbly prayed that this Hon'ble Tribunal may be graciously pleased to issue notice to the respondents for show cause as to why the prayer made hereunder shall not be allowed. If the respondents failed to show cause or upon insufficient causes shown be pleased to:

(i) quash the promotion order of Respondents 5 and 6 dated 14-2-2001.

(ii) direct the respondents to give promotion to the applicant to the rank of technical director from the date when her juniors promoted to the said post i.e. from 1-1-2001 with all service benefits.

(iii) and may pass such other order/orders as deemed just and proper.”

8. CAT disposed of the said original application vide order dated 4-5-2005 directing the department to inform Respondent 1 why she was not found suitable for promotion in spite of the high rating given to her by the Assessment Board in the scale of 10 points. The order passed by CAT indicates that promotion order of juniors (Respondents 5 and 6 therein) of Respondent 1 were not quashed.

10. After hearing the learned counsel for the parties and considering the prayer made in the writ petition, it is luculent that Respondent 1 did not set out any grounds to declare Rule 4(b) of the Rules as ultra vires. No such relief was even prayed for in the writ petition. Respondent 1 in the writ petition merely sought a writ in the nature of certiorari to set aside the order of CAT. Therefore in the given facts, there was no occasion for the High Court to declare Rule 4(b) as ultra vires.

11. While hearing the learned counsel appearing for the parties, we asked Shri B.H. Marlapalle, learned Senior Counsel along with Shri Shibashish Mishra appearing on behalf of the respondents and intervenors, as to how, in absence of any pleading setting out grounds challenging the vires of Rule 4(b) and in the absence of seeking any relief to that effect, the High Court was justified in exercising jurisdiction to declare Rule 4(b) as ultra vires? In response, the learned Senior Counsel has fairly stated that it is a defect in the pleadings as well as in the relief sought before CAT and in the writ petition. But still, they made an unsuccessful attempt to satisfy this Court that the said rule appears to be discriminatory and therefore the High Court has rightly exercised the jurisdiction while passing the impugned order. It is a trite law that for striking down the provisions of law or for declaring any rules as ultra vires, specific pleading to challenge the rules and asking of such relief ought to be made, that is conspicuously missing in the present case. In the absence of such a pleading, the Union of India did not have an opportunity to rebut the same. The other side had no opportunity to bring on record the object, if any, behind the Rules that were brought into force. We are also of the considered view that, in the writ petition seeking a writ of certiorari challenging the order of CAT, the High Court ought not to have declared Rule 4(b) as ultra vires in the above fact situation. Therefore, the High Court was not justified to declare Rule 4(b) as ultra vires.

57. The complainant had mentioned in the complaint to have been authorized by the Additional District Magistrate to lodge the complaint. The provision of Rule 33 (1) of the West Bengal Mineral Rules, 2002 cannot be declared to be repugnant by this Court exercising its power under 482 of the Cr.P.C. which is restricted to the provisions of criminal law within the periphery of criminal jurisdiction and cannot exceed its limit to venture into the writ jurisdiction of this Court to declare the Rule to be ultra vires or unconstitutional. It is primarily to be seen whether any person is charged against an offence which cannot be proved during the course of trial based on allegations vague, improbable, harassing the complaint and the registration of the FIR to be baseless, unfounded, absurd and conspicuously prejudicial to the interest of life and liberty of the accused with mala fide and malicious criminal intent. However, such an act should also be dealt with sparingly so that a guilty person cannot go scot free with impunity and an innocent be indicted. Unless and until the aforesaid Rules claimed to have been promulgated by the State government in contravention of the Central Act is challenged and declared to be inoperative, this Court exercising its power under Section 482 of the Cr.P.C. cannot question the validity of the same

58. Section 4 and 5 of the Criminal Procedure Code states as follows :

4. Trial of offences under the Indian Penal Code and other laws.—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained. (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place

of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving.—Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

59. Generalia Specialibus Non Derogant, the *lex specialis* doctrine states that incase two laws govern the same factual situation, a law governing a specific subject matter will over ride a law governing only general matter.

60. In **Ajoy Kumar Banerjee v. Union of India, (1984) 3 SCC 127**, the following was laid down by this court:

38. *Wrongful dismissal, other disciplinary proceedings, unfair labour practices, victimization etc. would still remain unaffected by any scheme or any provision of the Act. The only relevant and material question that would have arisen, is, whether in case where a statutory ceiling which one of the counsel for the petitioners tried to describe as “statutory gherao on rise of increase in emoluments and other benefits with the rise in the cost of index of prices (sic)” affected the position under the Industrial Disputes Act, 1947. It may be noted as we have noted before that this is not a case where any dispute was pending before any tribunal or before any authority under the Industrial Disputes Act, 1947 between the workmen concerned and the insurance companies. Though there was conciliation proceedings, the conciliation proceedings could not reach to any successful solution and the Conciliation Officer has made a report of failure of conciliation. The Government had the report. Thereafter the Government has not referred the dispute to any Industrial Tribunal but has framed a scheme which is the subject-matter of challenge before us. It cannot, in our opinion, be said that conciliation proceedings or any proceedings under the Industrial Disputes Act were pending and therefore in the middle of the proceedings under the Industrial Disputes Act, the Government had acted and framed the scheme and as such the same was bad and illegal. There were no proceedings pending under the Industrial Disputes Act, 1947. With the finding of the Conciliation Officer, the Government had two options, either reaching a settlement or framing a scheme on the one hand or to make a reference to the Tribunal of the dispute regarding the points mentioned in the demands of the workmen. There is one factual dispute*

which, in our opinion, is not very material. According to the petitioners, the Government had not acknowledged the receipt of the failure report of the Conciliation Officer. According to the respondents, the receipt was acknowledged; the failure of the conciliation proceedings, however, is admitted. No further steps or proceedings were required as such. The Government had to assess on the failure of the conciliation proceedings either to refer the matter to the Tribunal or to take such steps as it considered necessary. If the Government had not taken any of the steps, then it was open, if the employees concerned were in any way aggrieved, to take appropriate proceedings against the Government for doing so. As mentioned hereinbefore if the Scheme was held to be valid, then the question what is the general law and what is the special law and which law in case of conflict would prevail would have arisen and that would have necessitated the application of the principle *Generalia specialibus non derogant*. The general rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:

“(i) The two are inconsistent with each other.

(ii) There is some express reference in the later to the earlier enactment.”

If either of these two conditions is fulfilled, the later law, even though general, would prevail.

39. From the text and the decisions, four tests are deducible and these are: (i) The legislature has the undoubted right to alter a law already promulgated through subsequent legislation, (ii) A special law may be altered, abrogated or repealed by a later general law by an express provisions, (iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express provision in that behalf is found in the general law, and (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law. See in this connection, *Maxwell on the Interpretation of Statutes*, Twelfth Edn., pp. 196-198

61. The following as also held in *Maya Mathew v. State of Kerala*, (2010) 4 SCC

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12. The rules of interpretation when a subject is governed by two sets of rules are well settled. They are:

(i) When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the latter law repeals the earlier law. The rule-making authority while making the later rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;

(ii) When two provisions of law—one being a general law and the other being a special law govern a matter, the court should endeavour to apply a

harmonious construction to the said provisions. But where the intention of the rule-making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.

(iii) If the repugnancy or inconsistency subsists in spite of an effort to read them harmoniously, the prior special law is not presumed to be repealed by the later general law. The prior special law will continue to apply and prevail in spite of the subsequent general law. But where a clear intention to make a rule of universal application by superseding the earlier special law is evident from the later general law, then the later general law, will prevail over the prior special law.

(iv) Where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law.

20. *What logically follows from the principl*

e enunciated in the two decisions is that if any special rule is subsequent to the general rule, then the question of examining whether the prior general rule will prevail over a later special rule will not arise at all having regard to the categorical provision contained in Rule 2 of the General Rules. The principle laid down in those decisions will not apply where the special rule is made subsequent to the general rule.

21. *Though the Special Rules are of the year 1989, Entry 5 with its Notes (1) and (2) relating to Medical Officers, prescribing the ratio as also a condition that the backlog will not be restored, was inserted by an amendment with effect from 12-4-1999, vide G.O. dated 27-5-1999. The special rule, being later in point of time to the general rule, it is not permissible to carve out an exception as was done in S. Prakash [(1999) 5 SCC 624 : 1999 SCC (L&S) 997] and Prasad Kurien [(2008) 3 SCC 529 : (2008) 1 SCC (L&S) 856] . Entry 5 of the Table with Notes (1) and (2) in the Special Rules being subsequent to the insertion of Note (3) to Rule 5 of the General Rules, and being clear and specific in its terms, will prevail over Note (3) to Rule 5 of the General Rules. The said decisions are therefore of no assistance.*

62. In view of the provisions enumerated in Section 4 and Section 5 of the Criminal Procedure Code, it can be deduced that the police had been empowered to investigate this instant complaints. Considering the provisions of Section 5 of the Criminal Procedure Code and the decisions cited above, along with the observation of this Court in Chotelal Choudhury Ors. Vs. State of West Bengal in CRR No. 2721 of 2005, the special enactment of Mines and Minerals (Regulation and Development) Act, 1957, and the Rules

of West Bengal Minor Minerals Rules 1973 will be prominent and gain precedence over the provision of Section 379 of the Indian Penal Code.

63. Moreover, the complaints lodged against the petitioner in both the instances did not disclose the commission of theft of minerals and the material in the case diary pertaining to Barabani Police Station Case No. 09/2014 dated 11.01.2014 express allegations which are general and omnibus in nature with regard to the ingredients to constitute an offence under Section 379 of the I.P.C. which cannot be sustained and the Charge Sheet mentioning charge under Section 379 is faulty and devoid of merit.

64. Section 26 of the General Clauses Act states as follows:

"26. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of these enactments, but shall not be liable to be punished twice for the same offence."

65. In **Vijay Kumar Ghai v. State of W.B., (2022) 7 SCC 124**, the following was held

15. A two-Judge Bench of this Court in *Krishna Lal Chawla v. State of U.P.* [*Krishna Lal Chawla v. State of U.P.*, (2021) 5 SCC 435 : (2021) 2 SCC (Cri) 601] observed that multiple complaints by the same party against the same accused in respect of the same incident is impermissible. It held that permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such he would be forced to keep surrendering his liberty and precious time before the police and the courts, as and when required in each case.

16. The legality of the second FIR was extensively discussed by this Court in *T.T. Antony v. State of Kerala* [*T.T. Antony v. State of Kerala*, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048]. It was held that there can be no second FIR where the information concerns the same cognizable offence alleged in the first FIR or the same occurrence or incident which gives rise to one or more cognizable offences. It was further held that

once an FIR postulated by the provisions of Section 154CrPC has been recorded, any information received after the commencement of investigation cannot form the basis of a second FIR as doing so would fail to comport with the scheme of the CrPC. The Court further held that barring situations in which a counter-case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognizable offence would constitute an “abuse of the statutory power of investigation” and may be a fit case for the exercise of power either under Section 482CrPC or Articles 226/227 of the Constitution of India.

17. A two-Judge Bench of this Court in *K. Jayaram v. BDA* [*K. Jayaram v. BDA*, (2022) 12 SCC 815 : 2021 SCC OnLine SC 1194] observed : (SCC para 14)

“14. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations were or are pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.”

66. The complaint with regard to Barabani Police Station Case No. 130/12 dated 13.10.12 and Barabani Police Station Case No. 09/14 dated 11.01.14 are similarly described with identical allegation of committing an offence of illegal extraction of minerals and mining operation on Plot No. 1614(P) in Mouza- Khoirbad, JL. No. 06, Police Station- Barabani without any valid approval from the competent authority punishable as per provision of Rule 33(1) and evictable under Rule 33(2) of the West Bengal Minor Mineral (WBMM) Rules 2002. The second complainant based on similar allegations against the petitioner cannot be allowed to be continued. The complaint in Barabani P.S. Case No. 09/14 dated 11.01.2014 did not mention the

institution of an earlier complaint. Such multiple complaints denoting same incident against the petitioner will be detrimental to his interests and rights as well as frustrate the object of investigation resulting in derogatory abuse of statutory power.

67. In view of the above discussion, the criminal revisional application being CRR 3023 of 2014 is allowed. The proceeding of G.R Case No. 111 of 2014 pending before Learned Chief Judicial Magistrate, Asansol, Paschim Burdwan is quashed.

68. However, in view of the allegations with respect of G.R. Case No. 2197 of 2012 pending before Learned Chief Judicial Magistrate, Asansol the same are required to be scrutinized through appreciation of evidence. Accordingly the criminal revisional application is dismissed.

69. There is no order as to cost.

70. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

71. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)