

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-386-2021 (O&M)
Reserved On.:14.09.2023
Date of Decision: 21.09.2023

Gurpreet Singh GillPetitioner

Vs.

State of Punjab and AnotherRespondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Mansur Ali, Advocate &
Mr. Tushar Madaan, Advocate
for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is to quash FIR No.0182 dated 19.12.2020 (Annexure P-8) registered at Police Station Haryana, District Hoshiarpur under Sections 379, 411 of the IPC and Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 [*hereinafter referred as Mines Act, 1957*].

2. FIR in question was lodged on 19.12.2020 on the statement of ASI Rajnish Kumar (respondent No.2), Police Station Haryana, District Hoshiarpur, as per which, he along with other police officials was on patrolling on that day. As the police party reached at Dhussi Dam towards Sherpur Kham side, a little ahead of Village Sherpur Kham T Point, then out of Choe towards North side of Dhusi Dam, a person was seen coming on a tractor attached with a trolley filled with sand, who at the sight of the police party alighted from the tractor and fled away.

CRM-M-386-2021 (O&M)

The trolley was found to be filled with sand. It was alleged that unknown tractor driven by excavating the sand stealthily and illegally, had committed offences under Sections 379, 411 of the IPC and Section 21(1) of the Mines Act, 1957.

3. (i) It is contended by learned counsel on behalf of the petitioner that wife of the petitioner owns land in a Village Dandiana Kalan as per jamabandi (Annexure P-1). Petitioner is the power of attorney holder of his wife. Petitioner wanted to do filling of the cattle area in Village Sherpur Kham and had approached the concerned Mining Officer seeking permission for the same but was informed that farmers do not require said permission in view of notification dated 18.03.2015 (Annexure P-3).

(ii) It is contended that Rule 3 of The Punjab Minor Mineral Rules, 2013 [*in short '2013 Rules'*] provide exemption to landowner or possessor of any agricultural fields, for levelling of the agricultural field and disposal of any excess mines, minerals; or for removal of any minor mineral from the land in their possession for meeting the land filling requirements either in another agricultural field owned or possessed by them or for meeting bona fide/personal requirements.

(iii) Learned counsel contends that petitioner had dug the sand from his land detailed in jamabandi (Annexure P-1) and loaded the same in trolley for the purpose of filling. Respondent No.2 reached the land of the petitioner in the noon time and asked for illegal gratification, despite the fact that he was shown notification Annexure P-3. Respondent No.2 also tried to take away the tractor and trolley but as the trolley got stuck, said respondent No.2 brought another tractor from the police station and took away the trolley without any authority. Learned counsel for the petitioner has referred to photographs Annexure P-5 to Annexure P-7 in this regard. It is contended that later on, in the evening time, the

CRM-M-386-2021 (O&M)

FIR (Annexure P-8) has been lodged, which is liable to be set aside, as petitioner falls within the exemption provided under Rule 3 of 2013 Rules.

(iv) It is further contended that Section 22 of The Mines Act, 1957 bars cognizance of the offence to be taken, except upon the complaint in writing by the authorized person in this behalf. Learned counsel contends that respondent No.2 did not have the power to lodge the FIR and that it is only the authorized Mining Officer, who could have made the complaint. Further contention is raised that in case any illegal mining/ transportation of sand was being done by the petitioner, it was for the Mining Officer to have made assessment of royalty as per Rule 85 of 2013 Rules but no such action was ever taken and so, in all these circumstances FIR deserves to be quashed.

4. Refuting the aforesaid contentions, learned State counsel submits that immediately on detection of the illegal excavation of the sand, JEE-cum-Mining Inspector Harwinder Pal Singh had moved an application under Section 22 of The Mines Act, 1957, as per which petitioner had violated Section 21(1) of the Act. Police prepared the video and photograph of the place of occurrence, revealing that 40 to 50 trollies of sand had been taken away from the place of occurrence by doing illegal mining without obtaining permission from the Mines and Minerals Department and that said fact of illegal mining is not covered under the notification Annexure P-3. Still further, it is submitted that jamabandi (Annexure P-1) reveals joint property of several persons and that no document of partition or exclusive possession of any co-sharer is shown. Still further, wife of the petitioner is co-sharer of place of occurrence, which property is *gair mumkin choe*. Learned State counsel also submits that contention of the petitioner to the effect that he wanted to fill the cattle area in Sherpur Kham is incorrect, as no document

CRM-M-386-2021 (O&M)

regarding possession or ownership of any such cattle area is produced. Several trollies of sand were removed from the place of occurrence due to which there was a huge deep ditch at the spot. The property in question falls near Dhusi *Bandh* at a distance of 25 square yards and removal of the sand from the place of occurrence is a great danger to the Dhusi *Bandh*. Allegations of demanding of illegal gratification are denied. Controverting all other averments, respondent Nos.1 & 2, who filed separate replies on the same lines, have prayed for dismissal of the petition.

5. In re-joinder, petitioner reiterated his submissions and controverted the stand of respondents.

6. I have considered submission of both the sides and have perused the record carefully.

7. In **State of Haryana and Ors vs Ch. Bhajan Lal, 1992 AIR 604**, Hon'ble Supreme Court has laid down certain guidelines for the High Courts regarding the cases in which FIR can be quashed, which read as under:

“8.1. In the exercise of the extra-ordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code of Criminal Procedure, the following categories of cases are given 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 guide- in myriad kinds of cases wherein such power should be exercised:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

CRM-M-386-2021 (O&M)

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) where a criminal proceeding is manifestly attended with malafide 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.”

8. It is required to be considered as to whether present case falls under any of the aforesaid parameters.

9. Illegal excavation of sand was done from the place of occurrence as per the allegations of the prosecution; whereas petitioner contend that his case falls under Rule 3 of The Punjab Minor Mineral Rules, 2013. Notification dated 18.03.2015 (copy Annexure P-3) relied by the petitioner has been issued by the Government of Punjab, Department of Industrial and Commerce, in exercise of the powers conferred by Section 15 & 23(c) of the Mines and Minerals (Development and Regulation) Act, 1957, amending Punjab Minor Mineral rules, 2013. By way of this amendment, Rule 3 of 2013 rules, has been substituted as under:

“3 Exemptions. -

CRM-M-386-2021 (O&M)

(1) Notwithstanding anything contained in these rules, no rent, royalty or permit fee shall be charged or no permit/weightment slip shall be required for-

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

(ii) leveling of any agricultural fields by the land owner or possessor, as the case may be and disposal of any excess minor mineral accumulated in such activity;

(iii) for removal of any minor mineral by the land owner or the possessor/Panchayat as the case may be, from the land in their possession for meeting land filling requirements either in another agricultural field owned or possessed by them or for meeting their bona-fide/personal requirements including Religious and developmental activities.”

10. Learned counsel for petitioner has referred to ***Threesiamma Jacob & Ors. Vs. Geologist, Dptt. of Mining & Geology & Ors.*** [Civil Appeal N: 4540-4548 of 2000 decided on 8th July, 2013, in order to contend that ownership of the sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. It is contended that in the present case, petitioner being the power of attorney holder of his wife, who is the co-owner of the land in question, is exempted under Rule 3 of the Punjab Minor Mineral Rules, 2013.

11. It is no doubt true that as per Rule 3 of The Punjab Minor Mineral Rules, 2013, as substituted by way of an Amendment in 2015 by way of notification dated 18.03.2015 (Annexure P-3), no rent, royalty or permit fee is liable to be charged, nor any permit etc. is required for levelling of any agricultural field by the landowner or possessor and for disposal of any excess minor mineral; and also for the removal of any minor mineral by the landowner from the land in their possession for meeting land filling requirements either in another agricultural field owned or possessed by them or for meeting their bona fide/personal requirement, but this question in the present case is a disputed fact, inasmuch as petitioner alleges that he had loaded the sand in his trolley for the

CRM-M-386-2021 (O&M)

purpose of filling the land of cattle area in village Sherpur Kham but on the other hand, the respondent- State contends that as many as 40 to 50 trollies of sand were found to have been removed from the spot by way of illegal mining and so, the act of the petitioner is not covered under notification Annexure P-3. Still further, petitioner has not placed on record any documents to show his possession or the ownership regarding any cattle area in Village Sherpur Kham, which he wanted to fill by removing the sand from the land situated in Village Dandiana Kalan, which further makes the claim of the petitioner as doubtful and so, subject-matter of trial.

12. Proceeding further, the contention of learned counsel for the petitioner to the effect that FIR could have been lodged only on the complaint of the officer of the Central or State Government authorized in this behalf, which in the present case is the Mining Officer as per Section 22 of The Mines and Minerals (Development and Regulation) Act, 1957, has no merit.

13. Section 22 of the Mines Act reads as under: -

“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.”

14. By virtue of the aforesaid provision, taking cognizance of an offence punishable under any provision of the Mines Act, 1957 by the Court is barred, except upon complaint in writing to be made by the authorised person. However, it is important to notice that Sub-section (1) of Section 21 provide penalty for contravening provisions of sub-section (1) or sub-section (1A) of Section 4. Section 21(6) of the said Mines Act clearly provides that any offence under sub-section (1) shall be cognizable.

15. FIR in this case has been registered under Section 21 of the Mines

CRM-M-386-2021 (O&M)

Act, 1957 apart from Section 379/411 IPC. Thus, on one hand, the offence punishable under Section 21 of the Act is cognizable as per sub-section (6); on the other hand, the Court is debarred from taking cognizance except on the complaint in writing by the authorised person. This is a position of dichotomy because the offence in question being cognizable, it means that Police can arrest without warrant and in case the matter is reported, the offence being cognizable, it is bound to register FIR under Section 154 Cr.P.C.

16. A similar situation arose before this High Court pertaining to the provisions of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, which on one hand provides offences to be cognizable but on the other hand provides that no Court could take cognizance except on the complaint of the appropriate authority. The matter was considered by a Division Bench of this High Court in ***Hardeep Singh v. State of Haryana: Law Finder Doc Id # 1945782 bearing No. CRM-M-4211 of 2014 decided on 04.12.2014*** wherein, following legal points in a reference were made by the single bench: -

- “(1) Whether FIR for the offences committed under this Act can be registered on the complaint of Appropriate Authority and can be investigated by the Police?*
- (2) Whether the report under Section 173 CrPC along with the complaint of an Appropriate Authority can be filed to the Court?*
- (3) Whether no FIR can be lodged nor the offences can be investigated by the Police and only complaint by the Appropriate Authority directly to the Court lies?”*

17. After consideration, the division bench answered the above said law points as under: -

- “In the circumstances, the questions as formulated in the reference are answered in the following manner, that: -*
- (1) FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police; however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.*

CRM-M-386-2021 (O&M)

(2) A report under Section 173 CrPC along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only on the complaint that has been filed in accordance with Section 28 of the Act.

(3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.”

18. On the same analogy as in ***Hardeep Singh's case (supra)***, it is held that though the Police is competent to register FIR under Mines Act, 1957, the offence being cognizable but the Court can take cognizance only when the complaint is made in writing by the authorised officer. In other words, after concluding the investigation, Police may prepare the report under Section 173 Cr.P.C, which may be made part of the complaint to be filed by the competent officer to be presented in the Court concerned.

19. Said view also finds support form an authoritative pronouncement of the Hon'ble Supreme Court in ***Jayant and others Vs. The State of Madhya Pradesh, Criminal Appeal Nos.824-825 of 2020 arising from SLP (Criminal) Nos.2640-2641/2020*** decided on 03.12.2020. In that case, Hon'ble Supreme Court held that though Magistrate can in exercise of the power under Section 156(3) Cr.P.C direct the concerned SHO of the Police Station to lodge/ register crime case/FIR even for the offences under the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules made thereunder and at this stage bar under Section 22 of the MMDR Act shall not be attracted. Hon'ble Supreme Court concluded as under: -

“13. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis à vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to herein above and for the reasons stated herein above, our conclusions are as under:

i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In charge/SHO of the police station to lodge/register

CRM-M-386-2021 (O&M)

crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

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

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

v) in a case where the violator is permitted to compound the offences on payment of penalty as per subsection 1 of Section 23A, considering sub-section 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded.”

20. In view of the aforesaid legal position, it is held that offence under Section 21 The Mines and Minerals (Development and Regulation) Act, 1957, being a cognizable offence, so, FIR could have been lodged on the statement of respondent No.2, though for taking cognizance of offence by the concerned Magistrate, it will be necessary to file a complaint under Section 22 of the Act by

CRM-M-386-2021 (O&M)

the authorized person.

21. Another contention of learned counsel for the petitioner to the effect that preceding to the lodging of the FIR, it was necessary for the Assessing Authority to make assessment of royalty, has also no merit. In this regard Rule 84 and relevant portion of Rule 85 of 2013 Rules are required to be noticed, which read as under: -

***“84. Returns.** - Every assessee shall for each month furnish a return in Form 'N' about the production and disposal of minor minerals during that month by the 10th day of the month following to which the return relates.*

***85. Assessment of royalty.** - (1) If the assessing authority is satisfied without requiring the presence of the assessee or the production by him of any evidence that the returns furnished in Form 'N' in respect of any period are correct and complete, he shall assess the amount of royalty due from the assessee on the basis of such returns and record assessment order in Form 'O'.”*

22. ‘Assessee’ as per Rule 2(b) of 2013 rules means a mineral concession holder and also includes a person, who raises any minor mineral from any land without permission from the Government.

23. Rule 84 as reproduced above refers about every assessee, who is required to furnish for each month a return in Form ‘N’ about the production and disposal of minor minerals during that month by the 10th day of the month following to which the return relates. It is in this context that Rule 85(1) provides that if the assessing authority is satisfied without requiring the presence of assessee or the production by him of any evidence that the returns furnished in Form ‘N’ in respect of any period are correct and complete, then he shall assess the amount of royalty due from the assessee on the basis of such returns and record assessment order in Form ‘O’.

24. In the present case, neither petitioner has pleaded nor he has placed on record any document to show that he ever filed any return in Form ‘N’

CRM-M-386-2021 (O&M)

regarding disposal of any minor minerals from the land in question, as per Rule 84. As such, petitioner cannot be allowed to plead that assessment of royalty was required to be made by the Assessing Officer i.e., the Mining Officer, prior to lodging of the FIR against him.

25. In view of the above discussion as above, this Court finds that present case does not fall under any of the aforesaid parameters as laid down in *Bhajan Lal’s case (supra)*. As such, the petition is hereby dismissed.

Pending application(s), if any, also stands disposed of.

September 21, 2023

Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No