

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

**CRM-M-20611-2017 (O&M)
Date of Decision: February 28, 2023**

Islam and another

... Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ramnish Puri and
Ms. Monika Tanwar, Advocates for the petitioners.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

Prayer in this petition is to quash FIR No.123 dated 20.09.2016, registered at Police Station Khizrabad, District Yamuna Nagar, under Section 186, 188, 353, 379, 120-B of IPC, besides Section 4 (1) of the Mines & Minerals Act, 1957 (hereinafter referred as 'the Act') and all the consequential proceedings arising therefrom.

2. As per prosecution case, on 19.09.2016 Inspector Vipin Kumar, In-charge, Mining Staff, Yamuna Nagar, was going in his private car from village Araiyawala towards village Tajewala to detect illegal mining. At about 11.00 p.m., he saw three tractors-trolleys near village Araiyawala loaded with illegal mining material. On the signal given by him, the tractor-trolleys stopped and the drivers thereof fled away leaving the vehicles there. He (Inspect Vipin) arranged three drivers from village Araiyawala to drive the tractor-trolleys to the police station. Thereafter, tractor-trolleys were being driven towards the police station with complainant behind them in his car. As they crossed the barricade near village Araiyawala, the drivers, who had earlier fled away came there, forcibly took possession of the tractor-trolleys and went in village Bombaypur. Despite efforts, they could not be traced. All the three

CRM-M-20611-2017 (O&M)

tractors were of make 'Sonalika'. Complainant further disclosed that on next day, i.e. 20.09.2016, on inquiries about the tractors, he came to know that out of three tractors, two belonged to Fateh Haji of village Bombaypur and one belonged to Saalim S/o Ali Hassan.

3. FIR was registered. Investigation was carried out by the local police. Statements of witnesses were recorded. It was revealed that one tractor make 'Sonalika' bearing registration No.HR-71C-1491 was being driven by Saalim son of Ali Hasan and the same was owned by him being power of attorney holder of Harun S/o Jameel. Other two tractors bearing registration Nos. HR-71C-2283 and HR-02H-3531 were owned by petitioners Islam and Mehboob Khan respectively and the same, at the relevant time were being driven by Saalim S/o Rashid; and Vakil S/o Ibrahim. After completion of investigation, final report under Section 173 Cr.P.C. was filed.

4. It is contended by learned counsel for the petitioners that registration number of none of the tractor is disclosed in the FIR. There are so many tractors of make 'Sonalika' and so how the tractors in question are found to be indulged in the alleged activity of illegal mining, is not borne out from the record. It is further contended that as per Section 22 of the Mining Act, no Court can take cognizance of any offence punishable under the Act except upon the complaint in writing made by a person authorized in this behalf by the Central Government or the State Government. It is submitted that in this case investigation having been carried out by the local police and the complaint not having been filed by the competent person, so FIR deserves to be quashed.

Reliance has been placed upon the judgment of *"Harmela Ram v. State of*

Haryana”, 2013(3) RCR (Criminal) 141 and *“Pargat Singh v. State of Punjab”*(CRM-M No.29855 of 2014, decided on 10.03.2015).

5. Opposing the petition, it is submitted by learned State counsel that where a case relates to two or more offences, of which at least one is cognizable, the case shall be deemed to be cognizable notwithstanding that other offences are not cognizable. Contention is that the offences punishable under Section 353 and 120-B IPC are cognizable and so, there is no bar to take cognizance under the Act.

6. Having considered the submissions of both the sides and having perusing the record, this Court is of the view that petition deserves to succeed.

7. Taking the allegations of the prosecution at its face value, let it be assumed that it is the tractors of the petitioners, which were involved, though no registration number of the tractors indulging in the illegal mining, is mentioned in the FIR. However, it is admitted that petitioners are owners of two tractors. It is not the petitioners, who had fled away from the spot by taking their tractors from the persons, who were deputed by the complainant to drive the tractors to the police station.

8. As stated by learned State counsel, prosecution of the petitioners is being sought under Section 120-B IPC and Section 4 of the Act.

9. Section 22 of the Mining 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.”

10. Assuming that it is under the conspiracy with the petitioners that tractors were indulging in illegal mining by the drivers thereof, it is only the competent person authorized in this behalf by the Central or the State Government, who could have filed the complaint and without any such complaint, the Court is debarred from taking cognizance of the offence. In ***Harmela Ram’s case (supra)***, similar were the facts. This High Court held as under:-

“Thus, the allegations against the petitioners are that they were indulging in illegal mining. As per Section 4 of the Act, no person shall undertake any mining operation in any area except under and in accordance with the terms and conditions of reconnaissance permit or of a prospecting licence. Further no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provision of the Act.

As per Section 21 of the Act, whoever, contravenes the provisions of Sub Section 1 or Sub Section 1-A of Section 4 of the Act, shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to ₹25,000/- or with both.

Section 22 of the Act reads as under:-

“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.”

Thus, as per Section 22 of the Act, no court shall take cognizance of any offence punishable under the Act except upon complaint in writing made by a person authorised in this behalf.

Since in the present case, the complaint should have been filed under the Act in writing by the authorised person, the FIR in question is liable to be quashed as the Court cannot take

cognizance of the offence unless there is a complaint in writing by the authorised person with regard to commission of offence punishable under the Act. The authorised person instead of filing a complaint in writing sought registration of FIR against the petitioners and their co-accused, which could not have been done in view of Section 22 of the Act.

Accordingly, these petitions are allowed. FIR No.221 dated 20.7.2009 under Sections 379, 188 IPC registered at Police Station Mullana District Ambala (Annexure P-1) and all the subsequent proceedings arising therefrom are quashed.

However, the authorised person would be at liberty to initiate proceedings against the petitioners under the Act, if there is any violation of any provision of the said Act.”

11. Similar view has been taken by a co-ordinate Bench of this Court in ***Pargat Singh’s case (supra)***.

12. The contention of learned State counsel that cognizable offence is also made out, has no merit because as noticed above, petitioners were not at the spot and allegations against them at the worst are of conspiracy to do illegal mining. Taking cognizance of such offence is barred under Section 22 of the Act, as per the legal position as above.

13. In view of the above discussion, FIR No.123, dated 20.09.2016, registered at Police Station Khizrabad, District Yamuna Nagar, under Section 186, 188, 353, 379, 120-B of IPC, besides Section 4(1) of the Act and all the consequential proceedings arising therefrom, are hereby quashed qua the petitioners. However, the authorised person would be at liberty to initiate proceedings against the petitioners under the Act, if there is any violation of any provision of the said Act.

Disposed of accordingly.

February 28, 2023

sarita

Whether reasoned/speaking: Yes/No Whether reportable: Yes/No

(DEEPAK GUPTA)

JUDGE