

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

CRM-M-42201-2022

Date of Reserve:22.09.2023

Date of Decision:19.12.2023

Joginder Singh and others

...Petitioners

Vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Manoj Singla, Advocate
for the petitioners.

Mr. Mohit Chaudhary, AAG, Punjab.

N.S.Shekhawat J.

1. The petitioners have filed the present petition under Section 482 Cr.P.C with a prayer to quash FIR No.312 dated 05.09.2020, under Sections 4 and 21 of Mines and Minerals (Development and Regulation) Act, 1957 and Section 188 of IPC, registered at Police Station Patran, District Patiala (Annexure P-1) and all subsequent proceedings arising therefrom.

2. The FIR in the present case was registered on the basis of written complaint filed by the SI Darbara Singh against the petitioners. As per the complainant, on 05.09.2020, the complainant along with other police officials were present in connection with patrolling and in the meantime, Sunny son of Bhola Singh was on tractor make Arjun of red colour and soil digging machine was attached to it and was driven by Surinder Singh son of Gurwinder Singh and they were digging the soil and Jagdeep Singh son of Mahinder Singh was sitting on his tractor make Holland of blue colour which was attached with trolley, Vishaldeep Singh was sitting on his tractor make Sonalika of blue colour attached with trolley, Gurmel Singh @ Kala Singh son of Chhota Singh

was sitting on his tractor make Sonalika attached with trolley and Chhota Singh son of Mukand Singh was sitting on his tractor make Holland with trolley and were digging and loading soil in these tractors after doing illegal mining without permission of the Mining Department. Apart from that, keeping in view the Covid-19, Pandemic, the District Magistrate, Patiala had issued lockdown orders on Saturday and Sunday and orders have been issued to all the public to stay inside their own homes and thus, the accused had violated the orders passed by the Punjab Government and District Magistrate, Patiala. Ultimately, on getting the information, the raid was conducted and the FIR was registered under Sections 4 and 21 of Mines and Minerals (Development and Regulation) Act, 1957 and under Section 188 of the IPC.

3. Learned counsel for the petitioner contended that the offence as alleged under Section 21 of the Mines Act contemplates mode of cognizance which is contained in Section 22 of the Mines Act. It is submitted that in view of the provisions of Section 22 of the Mines Act, police has no power to take cognizance of the offence under the Mines Act and therefore, the FIR deserves to be quashed.

Section 22 of the Mines 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.”

A bare reading of the above would indicate that the statute itself has given a clear mode of cognizance and that too alone on the basis of complaint in writing to be made by a person authorized in this behalf by the

Centre Government or the State Government. Merely, because the complaint has been given by the Officer to the police, the cognizance by the Police is against the provisions of the Act.

4. In reply to the said argument, learned State counsel submitted that in the present case, after completion of the investigation, challan under Section 173 Cr.P.C has already been prepared and is yet to be presented before the competent Court. Still further, the FIR was maintainable against the petitioners under Sections 4 and 21 of Mines and Minerals (Development and Regulation) Act, 1957 and under Section 188 of the IPC.

5. Crux of the matter in the present case is whether Mining Department can lodge FIR in respect of illegal land mining in a private land or not?. It is necessary to peruse Sections 21 and 22 of the Mines Act which reads as under:

"21. Penalties.-(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of Section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of Section 4. such trespasser may

be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.

22. Cognizance of offences. *No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorized in this behalf by the Central Government or the State Government."*

6. There is a specific provision which binds the official of the department of Mines for taking any action under Mines Act read with Rules.

When statute specifically empowers the competent authority to take action in respect of making complaint against illegal mining, in that event, competent authority is required to do according to the statute. Official cannot deviate from the statute which provides for making complaint. Undisputedly in the present case, an FIR has been registered which is contrary to Section 22 of the Mines Act which provides for making complaint. It is undisputed that petitioners are owners of the land where the alleged allegations relating to illegal mining by the petitioners as owners. In that event, respondent-department have remedy of invoking Section-22.

7. Thus, it can be safely concluded that no offence under Sections 4 and 21 of Mines and Minerals (Development and Regulation) Act, 1957 is made out against the present petitioners and the FIR was wrongly registered against them by the police.

8. Now adverting to the offence under Section 188 of IPC, it has been alleged that in view of the Covid-19 Pandemic, The District Magistrate Patiala had issued lockdown orders on Saturdays and Sunday and the public was directed to stay inside their own homes. However, by coming out, the petitioners had violated the provisions of 188 of IPC.

9. Learned counsel for the petitioners contended that the orders were passed by the District Magistrate, Patiala and the complaint in the said case could have been filed by the District Magistrate or some superior officer in view of the provisions under Section 195 Cr.P.C. In the present case, the FIR was got registered by SI Darbara Singh and was liable to be set aside on that ground alone.

10. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioners on the ground that

the FIR was lawfully registered by the police.

11. I have heard learned counsel for the parties and perused the record.

12. The law is well settled that the proceedings under Section 188 of IPC can only be initiated by the concerned public servant or any superior officer and that to by way of filing before the competent Court of law.

13. The facts in the present case are not disputed. The language of Section 195(1) Cr.P.C. does not leave any scope for ambiguity and the provisions of this section have to be construed strictly. In accordance with the settled principles of interpretation applicable to criminal jurisprudence, the provisions of Cr.P.C. or Penal laws have to be strictly construed so as to be given meaning except what is intended by the legislature in the language used itself. The intention appears to be clear that where an offence is committed under Section 188 IPC, it is obligatory for the public servant concerned or any superior officer to file a complaint before the Competent Court of law. Even the case is covered by the judgments passed by this Court in ***“Jiwan Kumar Vs. State of Punjab and others”***, 2009(1) RCR (Criminal) 415; ***“Jagdish Vs. State of Haryana”***, 2015 (4) RCR Criminal, 694; ***“Karan Sharma Vs. State of Punjab and another”*** in CRM-M-11547 of 2017 and CRM-M-47378 of 2022, decided on 29.11.2022, titled as ***“Shubham @ Shubham Saini Vs. State of Haryana”***.

14. Reliance can also be placed on ***Jagtar Singh Vs. Union Territory, Chandigarh***, 1966 (1) RCR 669, wherein this Court held as under:-

"These facts are not disputed. Language of Section 195(1) of the Code does not leave scope for any ambiguity and is the section which has to be construed strictly. In accordance with the settled principles of interpretation applicable to criminal

jurisprudence the provisions of Criminal Procedure Code or Penal Laws have to be strictly construed so as to be given meaning except what is intended by the Legislature in the language used itself. The relevant portion of Section is that, "No Court shall take cognizance except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate." The intention appears to be clear that where an offence is committed under Section 188 Indian Penal Code, the Legislature has made it obligatory that the public servant before whom such an offence is committed, he will file a complaint to the Magistrate and the cognizance of the offence by the concerned Court is dependent upon the complaint in writing by such officer or an officer superior to such officer.

The counsel for the petitioner has relied upon Sawaran Singh v. The State of Punjab, 1994(3) Recent CR 352 and Bhagat Ram v. The State of Punjab, 1991(1) Recent CR 192. In both these cases the Court has indicated that the scope of Section 195(1) of the Code does not contemplate investigation in a normal way by the police and filing of the challan, but the complaint has to be presented directly to the concerned Court. In the present case though the complaint is stated to be addressed to the Court, but as it appears it was not presented to the Court and the Court did not pass any orders at that stage."

It is, thus, clear that the proceedings against the petitioner under Section 188 Indian Penal Code have been initiated on the basis of the F.I.R. and not on the basis of any complaint in writing of the public servant concerned as is required by Section 195(1)(a) of the Code. The registration of F.I.R. and the launching of proceedings thereafter against the petitioner is not permitted by the Code and thus, cannot be allowed to be sustained.

In view of the above discussion, the present petition is allowed and

FIR No.312 dated 05.09.2020, under Sections 4 and 21 of Mines and Minerals

(Development and Regulation) Act, 1957 and Section 188 of IPC, registered at Police Station Patran, District Patiala (Annexure P-1) and all subsequent proceedings arising therefrom are hereby quashed.

19.12.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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