

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

**CRM-M-45387 of 2019 (O&M)
Date of Decision: January 30, 2023**

Inderpal Singh	Versus	...Petitioner
State of Punjab and another		...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Jugam Arora, Advocate for Mr. Ankur Mittal,
Advocate for the petitioner.

Mr. P.S. Pandher, AAG, Punjab.

DEEPAK GUPTA, J.(Oral)

By way of this petition filed under Section 482 Cr.P.C., prayer is made to quash FIR No.110 dated 27.09.2019 registered at Police Station Haryana, Hoshiarpur under Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957 (for short, the Mines Act), and all the subsequent proceedings.

2. FIR in question was registered against the petitioner and others alleging illegal mining of sand. The contention of the petitioner is that Section 22 of the Mines Act bars jurisdiction of any Court to take cognizance of the offence and so, FIR could not have been registered. Reliance is placed on *Pargat Singh vs. State of Punjab, CRM-M No.29855 of 2015 (O&M) decided on 19.03.2015* by this court, besides *Bharthidas vs. State of Kerala 2016 (2)KHC 653 & Calcutta Jaipur Paribahan vs. State of Jharkhand 2009 (8) RCR (Criminal) 198*.

The respondents have repelled the contention.

3. Having considered the submissions of both the sides, I find no merit in the petition.

4. 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.”

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

6. FIR in this case has been registered under Section 21 of the Mines Act. 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 concerned 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.

7. A similar situation arose before this High Court pertaining to the provisions of PC & PNDT 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 on 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?

8. 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.

(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.

9. On the same analogy as in **Hardeep Singh's case (supra)**, it is held that though the Police is competent to register FIR, 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.

10. Said view also finds support from 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, 1956 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 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.”

11. As far as authorities cited by learned counsel for the petitioner are concerned, no advantage thereof can be given to the petitioner in view of legal position explained by a Division Bench of this Court in Hardeep Singh's case and the view taken by Hon'ble Supreme Court in Jayant's case (supra).

12. In view of the legal position as explained above, it is held that no ground is made out to quash the FIR. As such, petition is hereby dismissed.

January 30, 2023

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(DEEPAK GUPTA)
JUDGE

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