

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No 1597 of 2024

Arising Out of PS. Case No.-115 Year-2024 Thana- DEHRI TOWN District- Rohtas

Aditya Multicom Private Limited through its Chief Executive Officer Sadashiv Prasad Singh Son of Maleshwar Singh A company incorporated under the provisions of the Companies Act, 1956 having its registered office at 12, Waterloo Street, 2nd Floor, Kolkata-700069. R/O 410, Ganeshalay Apartment, Jharudih, Near Carmel School, Matkuria, P.s.- Dhanbad, Dhanbad- Jharkhand, 826001

... .. Petitioner/s

Versus

1. The State Of Bihar, through Principal Secretary, Home, Government of Bihar, Old Secretariat Patna
2. The Principal Secretary, Home, Government of Bihar, Old Secretariat Patna
3. The Director General of Police, Bihar, Old Secretariat Patna
4. The Superintendent of Police, Rohtas
5. The Officer-in-Charge, Dehri Town, Police Station, Rohtas
6. The Principal Secretary, Mines and Geology Department, Govt. of Bihar, Vikas Bhawan, Bailey Road Patna
7. The Assistant Director, Mines and Geology Department, Dist. Mining Office, Rohtas
8. The District Magistrate Cum Collector, Rohtas Sasaram
9. The Mines Inspector, District Mining Office, Rohtas

... .. Respondent/s

WITH

Criminal Writ Jurisdiction Case No 1613 of 2024

Arising Out of PS. Case No.-47 Year-2024 Thana- DAUDNAGAR District- Aurangabad

Aditya Multicom Private Limited A Company Incorporated Under The Provisions Of The Companies Act, 1956, Having Its Registered Office At 12, Waterloo Street, 2nd Floor, Kolkata-700069, Through Its Chief Executive Officer, Sadashiv Prasad Singh, Aged About 61 Years (male), Son Of Maleshwar Singh, Resident Of 410, Ganeshalay Apartment, Jharudih, Near Carmel School, Matkuria, P.S.- Dhanbad, Dhanbad-Jharkhand, 826001

... .. Petitioner/s

Versus

1. The State Of Bihar, Through Principal Secretary, Home Government Of Bihar, Old Secretariat, Patna
2. The Principal Secretary, Home, Government Of Bihar, Old Secretariat, Patna
3. The Director General Of Police, Bihar, Old Secretariat, Patna
4. The Superintendent Of Police, Aurangabad



- 5. The Officer In Charge, Daudnagar Police Station, Aurangabad
- 6. The Pr. Secretary, Mines And Geology Department, Govt. Of Bihar, Vikas Bhawan, Bailey Road, Patna
- 7. The Assistant Director, Mines And Geology Department, District Mining Office, Aurangabad
- 8. The District Magistrate Cum Collector, Aurangabad
- 9. The Mines Inspector, District Mining Office Aurangabad

... .. Respondent/s

Appearance :

(In Criminal Writ Jurisdiction Case No 1597 of 2024)

For the Petitioner/s : M/s Suraj Samdarshi, Avinash Shekhar, Vijay
Shankar Tiwari, Advocates

For the S t a t e : Mr SC XIX

For the M i n e s : Mr Naresh Dixit, Advocate

(In Criminal Writ Jurisdiction Case No. 1613 of 2024)

For the Petitioner/s : M/s Suraj Samdarshi, Avinash Shekhar, Vijay
Shankar Tiwari, Advocates

For the S t a t e : Mr SC XX

For the M i n e s : Mr Naresh Dixit, Advocate

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 07-10-2024

Since in both the writ petitions, common issues are involved, hence these writ petitions are being decided by this common order.

2 Cr W J C No 1613 of 2024 has been filed by the petitioner seeking quashing of Daudnagar PS Case No 047 of 2024 dated 08.02.2024 registered for the offence punishable under Sections 379 and 420 of the IPC and Rule 56 of Bihar Minerals (Concession, Prevention of illegal Mining, Transportation and Storage) Rules, 2021 (hereinafter referred as the **2019 Rules**) and Cr W J C No 1597 of 2024 has been filed seeking quashing of



Dehri Town PS Case No 115 of 2024 dated 13.02.2024 registered for the offence punishable under Sections 379 and 420 of the IPC.

3 In both the petitions, the petitioner is common which is a company incorporated under the Companies Act. Dehri Town PS Case No 115 of 2024 is based upon the written complaint made by Anil Kumar, Assistant Director, District Mining Office, Rohtas and Daudnagar PS Case No 047 of 2024 is based upon the written complaint submitted by the informant Vikas Kumar, Assistant Director, District Mining Office, Aurangabad.

Facts of the case.

4 The petitioner, in both the petitions, i e, Aditya Multicom Private Limited was minerals concessionaire of sand ghats in the entire districts of Aurangabad and Rohtas from 2015 to 2019 for excavation and sale of sand. After completion of initial settlement period of five years, several extensions were granted to the petitioner till 30.09.2021. It is further pleaded that on 20.04.2021, petitioner surrendered its settlement. Petitioner had obtained K Licence in terms of Rule 39 of the 2019 Rules in Aurangabad and Rohtas for storage of sand beyond the leasehold area. It is further pleaded that the sand stocked at K Licence was royalty paid. After surrender of the settlement, generation of E-Challans was suspended/blocked from 01.05.2021. The petitioner



requested the authorities of Mining Department to conduct physical verification of the sand stocked at K Licence sites and allow it to sell the same. However, no verification was conducted and the K Licenses in both the districts were cancelled. Subsequently, the Mining Department instituted several FIRs against the petitioner alleging that it had misappropriated the sand from K Licence site and sold the same without issuance of e-transit challans and cause revenue loss to the Government. Details of the said FIRs have been mentioned in paragraph 20 of both the writ petitions. It was further pleaded that in the meantime, the Directorate of Enforcement (hereinafter referred to as *the ED*) instituted ECIR bearing PTZO/07/22 dated 10.01.2022 under the Prevention of Money Laundering Act, 2002. Allegedly, during investigation, the ED obtained information from the Income Tax Department which was gathered during the raid conducted by the Income Tax Department on another Company. On the basis of such information, the ED came to the conclusion that for the period from April, 2020 to August 2020, sand worth Rs 90,92,71,400/- was sold from the sand ghats of Aurangabad and Rohtas and on comparison of the same with the information provided by the Mining Department, it appeared that sand worth Rs 38,71,46,070/- had been sold without generation of e-transit



challans which has caused revenue loss to the public exchequer. The above information was shared by the ED with the Mining Department and on the basis of the said information received from the ED, both the above mentioned FIRs have been lodged against the petitioner alleging that the petitioner has, during the period April 2020 to August 2020, transported sand worth Rs 38,71,46,070/- without generation of e-transit challans.

5 It is submitted by the learned counsel for the petitioner that from bare perusal of the FIRs in both the writ petitions, it reveals that it has been lodged merely on the basis of information supplied by the ED relying on unsubstantiated information gathered from the documents seized by the Income Tax Department. It is further submitted that the information gathered from the Income Tax Department, which has been supplied to the Mining Department, has not been verified by the officials of the Mining Department. Without verifying the facts, the officials of the Mining Department lodged the FIRs. The petitioner has duly filed its monthly returns, which is duly accepted by the Mining Department and at no point of time, any objection was raised. If, after verification of the information received from the ED, the Mining Department arrived at the conclusion that the returns were incorrect, it could have conducted an assessment in accordance



with Rule 46 (5) of the 2019 Rules and proceeded to assess the amount due from the petitioner and if after the assessment, there arose any liability against the petitioner then according to Rule 82 of the 2019 Rules, the same could have been recovered by way of certificate proceedings under the Bihar Public Demands Recovery Act, 1914 but, without following this, the Mining Department has directly lodged the FIR.

6 It is further submitted by the learned counsel for the petitioner that since the petitioner is a settlee/mineral concessionaire, therefore, the competent authority to deal the case of the petitioner is the Collector of the concerned district and only after his sanction, a criminal prosecution can be instituted against the settlee/mineral concessionaire for any violation of the 2019 Rules and any other condition of the mineral concession.

7 Learned counsel further submits that the information supplied by the ED is based upon loose sheets of the paper seized by the ED. According to the counsel, the loose sheets of paper not in the form of book of accounts have no evidentiary value are irrelevant and cannot form the basis of lodging the prosecution. He further submits that the Income Tax Department has also, till date, not raised any demand or instituted any prosecution against the petitioner or its Directors. Reliance has been placed by the



counsel upon the case of *CBI -Versus- V C Shukla*, reported in *(1998) 3 SCC 410* and *Manohar Lal Sharma -Versus- Union of India*, reported in *(2017) 11 SCC 731*.

8 The learned counsel further submits that allegation against the petitioner is of having transported the sand without generating of e-transit challans from April, 2020 to August, 2020. It is submitted by the learned counsel that at the relevant time, failure to issue transport challans was punishable under Rule 39 (3) of the 2019 Rules with simple imprisonment which may be extended up to one year or value of mineral or fine up to Rs 10,000/- or both. Rule 39 (3) of the 2019 Rules has been amended vide Notification No 1652 dated 02.07.2021 to provide that without issuing of challan, transportation would be punishable under Rule 56 of the 2019 Rules. According to the counsel, prior to 02.07.2021, the only penal provision for transporting mineral without a challan was Rule 39 (3) of the 2019 Rules. Since allegation for transporting the sand without generation of e-transit challan is for the period from April, 2020 to August 2010, i e, prior to the amendments in the Rules, the FIRs could not have been registered under Rule 56 of the amended Rules. According to the counsel, as violation of Rule 39 (3) is not a cognizable offence, therefore, no FIR can be lodged for the violation of Rule 39 (3) of



the 2019 Rules. Further, relying on the judgment passed by the coordinate Bench of this Court in ***CWJC No 111 of 2023 (M/s Harsh Construction -Versus- The State of Bihar & Ors)***, he submits that the amended Rule 56 of the 2019 Rules is not applicable in the case of a valid settlee.

9 So far as the offence under Section 420 of the IPC is concerned, learned counsel for the petitioner submits that a bare perusal of the FIR shall reveal that it does not contain any averment about the deceit, cheat or fraudulent intention of the accused persons, therefore, there is no material available on record on the basis of which the offence under Section 420 of the IPC can be made out.

10 So far as the offence under Section 379 of the IPC is concerned, learned counsel further submits that the same is also not made out against the petitioner since there is no allegation in the FIR that the petitioner has sold sand in excess of its entitlement.

11 Relying on the judgments passed by the Supreme Court in the case of ***State of Haryana & Others -Versus-Bhajan Lal & Others***, reported in ***1992 Supp (1) SCC 335***, it is submitted by the learned counsel that it is the settled proposition of law that whenever an accused comes before a Court seeking quashing of



the FIR or criminal proceedings essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with ulterior motive for wreck vengeance then in such circumstances, the Court owes a duty to look to the FIR with care and a little more closely, and it will not be just enough to look into the allegations made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offences are disclosed or not. Reliance has also been placed on the judgment of *Salib @ Shalu @ Salim -Versus- The State of UP & Others*, reported in *2023 SCC Online SC 947*.

12 It is further submitted by the learned counsel for the petitioner that on the same set of allegations and on the basis of the same letter of ED, Daudnagar PS Case No 047 of 2024 dated 08.02.2024 has already been registered by the Mining Department in Aurangabad against the petitioner. Thereafter, second FIR, i e, Dehri Town PS Case No 115 of 2024 dated 13.02.2024 has been registered. According to the counsel, on the same set of facts, two FIRs have been instituted and in both the FIRs, the allegation and the amount of revenue loss mentioned as Rs 38,71,46,070/-. In fact, a plain reading of both the FIRs reveal that they are verbatim. For the same set of allegations, lodging of two different FIRs is not permissible. Reliance has been placed by the counsel in this



regard on the judgment of *T T Antony -Versus- The State of Kerala & Others*, reported in (2001) 6 SCC 181, *Amitbhai Anilchandra Shah -Versus- The Central Bureau of Investigation & Another*, reported in (2013) 6 SCC 348 and *Tarak Dash Mukharjee & Others -Versus- The State of Uttar Pradesh & Others*, reported in 2022 SCC Online SC 2121. Therefore, according to the counsel, the second FIR, i e, Dehri Town PS Case No 115 of 2024 dated 13.02.2024 is not maintainable and, only on this ground, the second FIR deserves to be quashed.

13 Learned counsel for respondents No 6 to 9, i e, Mining Department, opposing the argument raised by the learned counsel for the petitioner, submits that both the writ petitions, submitted by the petitioner, are devoid of merit, premature and are liable to be dismissed. According to the counsel, on the basis of contents made in the FIR, all the alleged offences (cognizable offences) are prima facie made out against the petitioner. He further submits that petitioner has introduced some documents by way of annexures but those documents were neither part of the FIR nor the part of the charge sheet and in that view of the matter, those documents cannot be looked into and appreciated in a proceeding under Articles 226 and 227 of the Constitution of India as those documents can only be introduced and can only be



appreciated by the trial Court. The Writ Court cannot assume the duty of the trial Court. Relying on the judgment passed by the Division Bench of this Court in Cr W J C No 299 of 2022, learned counsel submits that as observed by the Division Bench, the present FIRs are maintainable. The learned counsel also placed his reliance on the judgment passed by the Supreme Court in the case of *The State of Bihar & Another -Versus- P P Sharma & Another*, reported in *AIR 1991 SC 1260*. However, the learned counsel for respondents No 6 to 9 has fairly admitted the fact that the second FIR, i e, Dehri Town PS Case No 115 of 2024 dated 13.02.2024, has been registered on the same set of facts and allegations and on the basis of the same letter of ED based upon which Daudnagar PS Case No 047 of 2024 has already been registered on 08.02.2024.

14 Rebutting the argument of learned counsel for the Mines Department, learned counsel for the petitioner submits that the documents, being relied upon by the petitioner, are not the documents of the petitioner rather they are unimpeachable documents.

15 I have heard learned counsel for both the parties. Perused both the FIRs as well as the documents annexed with the writ petitions.



16 Undisputedly, both the FIRs have been registered against the petitioner on the basis of the same letter of ED. A plain reading of both the FIRs also reveal that they are verbatim. Since on the same set of facts and allegations, the first FIR, i e, Daudnagar PS Case No 047 of 2024 dated 08.02.2024 has already been registered in Aurangabad against the petitioner, therefore, the second FIR, i e, Dehri Town PS Case No 115 of 2024 dated 13.02.2024 is not maintainable which has also been admitted by the learned counsel for the respondent-Mining Department.

17 Accordingly, on the basis of above, the second FIR dated 13.02.2024, i e, Dehri Town PS Case No 115 of 2024 for the offences punishable under Sections 379 and 420 of the IPC is hereby quashed without going into the merit of the said FIR.

18 So far as the Daudnagar PS Case No 047 of 2024 is concerned, it would be appropriate to reproduce some of the relevant provisions of the 2019 Rules. Rule 39 of the 2019 Rules prior to the amendment reads as follows:

“39. (1) Every person who carried business of minor/major mineral beyond any lease hold area shall obtain a stockist license from the Mining Officer in Form-K which shall be displayed at a conspicuous place of business and shall maintain proper accounts of purchase and sale of all such minerals in a register in Form-H which shall be produced before the Mines Commissioner, Director of Mines, Additional Director of Mines or Deputy Director



of Mines or Mining officer or any other officers authorised by the Government, for inspection. Every application for obtaining license in Form-K shall be accompanied with a fee of Rs 10,000/- (Ten Thousand Rupees)

(a) Every such license shall be valid for one calendar year;

(b) Every such license may be renewed on application which shall be accompanied by a fee of Rs 2000 (Two Thousand Rupees)

(2) Every such person as mentioned in (1) shall issue a transport challan in Form-‘G’ or in the prescribed format to every carrier, while dispatching minerals from his stock.

(3) Whosoever fails to obtain a license in Form K, or issue a challan in Form G, or maintain the register in Form ‘H’, or is found to violate the rules, would be liable for punishment under Rule 56.

(4) No person shall be permitted to erect, install or operate a stone crusher outside a lease hold area.

Provided that the existing stockist license held for store mineral used for crusher shall remain operational till the validity of their license period, on the condition of the licensee abiding by all the relevant rules/provision of law/conditions stated in their license/conditions stated in CTE & CTO issued by BSPCB failing which the license shall be cancelled.

Provided further that the department may allow installation of any crusher including mobile crusher within a periphery of 500 meters of the lease hold boundary to the lease holder or person directly engaged in construction activity on conditions as decided by the department.”



19 Rule 43 reads as under:

“43. Prohibition on Transportation.- No person shall transport or carry or cause to transport or carry any Ore/mineral by any means from the place of raising, leasehold area or the area of stock of minerals to another place without being in possession of a valid transit pass/challan/E-challan in Form-G or in the prescribed format issued by the Competent Officer under the Rules;”

20 Rule 46 reads as under:

“46. Registers, returns and Sighboard.-(1) Every Mineral Concession holder shall maintain Register in Form ‘H’ in which day to day transaction shall be entered. He shall also have to display a signboard.

(2) Every Mineral Concession holder shall submit every month to the Competent Officer a true and correct return for minerals in Form ‘I’ by the fifteenth day of the following month to which it relates.

(3) Every Mineral Concession Holder shall submit annual returns in Form “J” as appended to these rules before the 30th April of each year in respect of the preceding financial year.

(4) Every Mineral Concession holder shall give all reasonable facilities to the Mining Officer or Director of Mines or Additional Director of Mines or Deputy Director of Mines or any other Officer authorised by the Collector in this behalf to inspect, verify and check the accounts of the minerals.

(5) If the accounts, returns and other evidence produced by the Mineral Concessional holder or any other person who has removed minerals, are in the opinion of any of the



officers authorised incorrect, incomplete or unreliable either wholly, or partly, the officer concerned, shall report to the Mining Officer who shall proceed to assess to the best of his judgment, the amount of royalty due from the assessee:

Provided that if the mining officer himself has formed the opinion he shall proceed forthwith to assess to the best of his judgment, the amount of royalty due from the assessee.

(6) The state government in addition to accounts/returns or other evidence may also direct to ascertain the actual quantity of mineral excavated during relevant concession period by deploying modern technology such as aerial survey/ground survey or any latest method.”

21 Rule 47 (4) reads as under:

“47. Power to Suspend or Cancel Mineral Concession.-

(4) Notwithstanding anything mentioned above, in case of detection of any violation of the Act, these rules and any other condition of the mineral concession the State Government or the Collector may, apart from cancelling the mineral concession, also impose suitable financial penalties and/or start criminal prosecution.”

22 Rule 56 (1), as it stood prior to the amendment,
reads as under:

“(1) Whoever is found to be extracting or removing minor minerals or on whose behalf such extraction or removal is being made he be an agent, a manager, an employee or a contractor or a sub-lessee, otherwise than in accordance with these Rules, shall be presumed to be party to the illegal removal of the minor



mineral and every such person shall be punishable with simple imprisonment which may extend upto two years or with fine, which may extend upto rupees five Lakhs or with both.”

23 Rule 56 of the Rules (post amendment) reads as follows:

“56. Illegal mining, transportation and storage of minerals.- (1) No person shall extract or remove or undertake any mining operation in any area without holding any mineral concession, permit or any other permission granted or permitted under these rules, or shall transport or store or cause to be transported or stored any mineral without a valid challan or license.”

(2) Whoever contravenes the above sub-rule shall be punished with an imprisonment for a term, which may extend to two years or with a fine which may extend to five lakh rupees, or with both:”

24 At this juncture, it would also be appropriate to refer to the observation made by the Hon’ble Supreme Court in the case of *Bhajan Lal (supra)*. The Supreme Court has laid down a category of cases in which the power of quashing the FIR may be exercised, the relevant part of which is being quoted here under for ready reference:

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 extra-ordinary 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.

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 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.

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 F.I.R. 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.”

25 From perusal of the Rules, as referred to above, it is evident that a mineral concessionaire/settlee of the sand ghats is required to transport sand only on the basis of e-transit challans. Rule 39 (2) of the 2019 Rules especially deals with storage of minerals beyond leasehold area on the basis of K licences, provides that every person having a storage licence has to issue a transport challan in Form G while dispatching the minerals from his stock. In so far as transport of sand from the leasehold area, i.e., sand ghat is concerned, the relevant provision seems to be Rule 43 of the 2019 Rules which prohibits transportation of minerals without a valid transit challan. Failure by K licence holder to issue transport challans was punishable under Rule 39 (3) of the 2019



Rules as it stood prior to amendment with simple imprisonment which may be extended up to one year or value of the minerals which may be extended up to Rs 10,000/- or with both. However, failure to issue challan for transport of sand from the leasehold area was not made especially punishable under Rule 43 or any other Rule including Rule 56 (as it stood prior to amendment) since it only penalized the activity of illegal excavation of minerals and the carrier for transportation without a valid challan. After the amendment, Rule 56 penalized the transportation without E-challan. A coordinate Bench of this Court in **CWJC No 111 of 2023 (M/s Harsh Construction -Versus- The State of Bihar & Others)** while dealing with the amended Rule 56 has held that Rule 56 of the 2019 Rules does not apply in case of a valid settlee. There is no dispute on the point that at the relevant point of time, the petitioner was the valid settlee. Therefore, amended Rule 56 of Rule 2019 Rules would not apply in the case of the petitioner.

26 Thus, this Court finds that institution of the instant FIR under Rule 56 of the 2019 Rules (amended) is completely unjustified and is not applicable to the case of the petitioner.

27 A bare reading of the written complaint made by the Mining Officer on the basis of which FIR has been registered also shows that the said written complaint has been filed only on the



basis of information gathered from the ED which the ED has gathered from the Income Tax Department. There is nothing in the complaint which shows that before lodging the FIR (complaint), the Mining Department has verified the facts shared to it by the ED. It was incumbent upon the Mining Department to ascertain the veracity of the information supplied by the ED by conducting an independent verification. The Mining Department, upon receipt of such information from the ED, should have marked upon an assessment proceeding under Rule 46 of the 2019 Rules in order to determine the liability of the petitioner and proceeded according to law to recover the civil liability under Rule 82 of the 2019 Rules.

28 I also find substance in the argument raised by the learned counsel for the petitioner with respect to the valid settlee, no criminal prosecution can be launched without getting the approval from the Collector. Rule 47 of the 2019 Rules empowered the Collector to cancel/suspend the settlement of the settlee. Rule 47 (4) of the 2019 Rules especially provides that in case of detection of any violation of the Act, the Rules or any other condition of the mineral concession, the State Government or the Collector may, apart from cancelling the mineral concession, also impose suitable penalties and/or start criminal prosecution.



29 In this case, undisputedly, the petitioner is a settlee and, as per the allegations, it was found that he was transporting the sand without E-transit challan. Then the Collector could, apart from cancelling the mineral concession, impose suitable financial penalties and/or started criminal prosecution. The instant FIR has been lodged by the Assistant Director, Mines without getting any approval of the Collector of the concerned district.

30 As discussed above, it is established that Rule 56 of the amended 2019 Rules is not applicable in the case of the petitioner since the alleged transportation of sand is of the period from April, 2020 to August, 2020. The same was punishable under Rule 39 (3) of the 2019 Rules (prior to amendment) in which simple imprisonment which may be extended up to one year and a fine which may be extended up to Rs 10,000/- is provided. The above offence is non-cognizable offence as per the second clause of the first schedule of the Code of Criminal Procedure, 1973.

31 So far as the offence under Section 420 of the IPC is concerned, plain reading of the written complaint as well as the FIR, it reveals that it does not contain any averment about the deceit, cheating or fraudulent intention of the petitioner. Therefore, the offence under Section 420 of the IPC is also prima facie not made out.



32 So far as the offence under Section 379 of the IPC is concerned, perusal of the complaint as well as the FIR also reveals that there is nothing in the complaint which shows that the petitioner has sold sand in excess of its entitlement. There is nothing in the complaint which shows that the petitioner has excavated the sand from the sand ghat in excess of its entitlement. Therefore, offence punishable under Section 379 of the IPC is also prima facie not made out.

33 In the totality of the circumstances, as discussed above, the materials available on record, this Court is of the considered opinion that further constitution of criminal proceeding against the petitioner would only be an abuse of the process of the Court.

34 This Court, therefore, quashes the FIRs in connection with Dehri Town PS Case No 115 of 2024 dated 13.02.2024 and Daudnagar PS Case No 047 of 2024 dated 08.02.2024 as well as the subsequent proceedings, if any, against the petitioner.

35 Accordingly, the writ petitions are allowed.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	26.09.2024
Uploading Date	07.10.2024
Transmission Date	07.10.2024

