

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.R. 314 of 2014**

**Shyam Sundar Das & Ors.**

**-Vs-**

**The State of West Bengal**

For the Petitioners : Mr. Milon Mukherjee  
Mr. Biswajit Manna

For the State : Mr. Narayan Prasad Agarwala,  
Mr. Pratick Bose

Heard on : 24.01.2024, 04.03.2024, 12.06.2024

Judgment on : 08.08.2024

**Ananya Bandyopadhyay, J.:-**

1. The instant revisional application has been filed by the petitioners for quashing of the proceedings of G.R. Case No. 315 of 2011, pending before the Learned Judicial Magistrate 3<sup>rd</sup> Court, Contai arising out of Digha Mohona Coastal Police Station Case No. 1/2011 dated 20.04.2011 under Section 379 of the Indian Penal Code read with Section 21 of the Mines and Minerals (Development & Regulation) Act, 1957.
2. The petitioner no.1 was the Secretary of the Digha Fishermen & Fish Traders Association, while the other three petitioners were respectively the Chairman, Vice Chairman and Assistant Secretary of the said Association. The said Association was an organization registered under the Societies Registration Act working for the upliftment of livelihood of "Fishermen and Fisheries Industry".

3. Digha Mohona Coastal Police Station Case No. 1/2011 dated 20.4.2011 was registered for investigation on the basis of a complaint lodged by Sri Arup Kumar Mondal, the Block Land & Land Reforms Officer, Ramnagar-I with the Officer-in-Charge, Digha Police Station, inter alia, alleging commission of an offence punishable under Section 379 of the Indian Penal Code read with Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957 by the petitioner and others. The complaint narrated the petitioner along with three others viz. Radhagobinda Das, Pranab Kar and Rahininandan Khara, who were members of the Executive Body of Digha Fishermen & Fish Traders Association, had extracted and removed sand from the canal at Digha Mohana without taking prior permission from the appropriate authority.
4. On completion of investigation, Charge-sheet No.7/2011 dated 18.08.2011 under Section 379 of the Indian Penal Code read with Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957 was submitted against the present petitioners.
5. On 20.2.2011 the petitioners preferred a representation before the Prodhan, Padima-II Gram Panchayat, praying for re-excavation of Digha Khal for safe passage of fishing boat as the same was becoming unfit for harbouring of boats as also other reasons requiring such re-excavation.
6. On 24.2.2011 the Prodhan of Padima-II Gram Panchayat, Alankarpur, Purba Midnapore issued a letter in favour of the petitioners, thereby directing the organisation of the petitioners to execute the re-excavation work of the dried out "Digha Khal" as the same was required for the benefit of thousands of fishermen.

7. Due to deposit of silt on the bed of the sea, fishermen had to undergo extreme difficulties for commuting on the sea as also bringing it back to the shore. In order to resolve such difficulties, the Digha Fishermen and Fish Traders Association filed representations before the local Panchayat for taking effective steps to excavate the silt deposit on the bed of the sea shore. The local Panchayat, in response to such representations of the said association, asked the association to take appropriate steps for removing such silt as the local Panchayat was not having any such infrastructure to remove such silt.
8. The petitioners submitted that Section 22 of the Mines & Minerals (Development & Regulation) Act, 1957 provided that no court should take cognizance of any offence punishable under the said Act or any rules made thereunder except upon complaint made by a person authorised in that behalf by the Central Government or State Government. In the instant case, cognizance was taken on the basis of the report submitted by the police personnel of Digha Mohona Police Station on the basis of a complaint lodged by the Block Land & Land Reforms Officer, Ramnagar-1.
9. Learned Advocate for the petitioners submitted as follows:-
- i. During the course of investigation, the investigating agency did not seize any article to prima facie make out a case that excavation of minor minerals took place at the place of occurrence.
  - ii. In the First Information Report, the allegation was only to the effect that there was extraction and lifting of sand from the canal without prior permission from appropriate authority.

- iii. There was no allegation that any sand was dishonestly taken off from the canal with intention to cause wrongful gain through such property.
- iv. In the charge-sheet, the investigating officer had stated that he tried to apprehend the petitioners but failed and tried to search labourers who extracted the sand but found nothing.
- v. The petitioners on 20.02.2011 approached the Pradhan of the said Gram Panchayat for taking necessary steps for excavation of the same at the behest of their association.
- vi. On 24.02.2011 the Pradhan of Padima-II Gram Panchayat informed the petitioners regarding their 'No Objection' if the petitioners were willing to do the re-excavation work.
- vii. The petitioners re-excavated the canal with the permission of the jurisdictional Pradhan of the Gram Panchayat.
- viii. The petitioners were not aware that permission was required to be sought for from the Irrigation Department.
- ix. On 04.11.2011 the Irrigation Department gave permission to the petitioners to re-excavate the khals at their own cost.
- x. Section 22 of the Mines and Minerals (Development and Regulation) Act provided that no Court should take cognizance of the offence punishable under the said Act except upon complaint in writing made by a person authorized by the Central Government or State Government. The appropriate authority was the Irrigation Department, Government of West Bengal who was supposed to file complaint before a Court under Section 200 of the Code of Criminal Procedure for taking

cognizance under Section 190(1)(a) of the Code of Criminal Procedure.

- xi. Cognizance by the Magistrate on the basis of the police report under Section 190(1)(b) of the Code of Criminal Procedure was bad in law for which the proceeding impugned was liable to be quashed.

10. Learned Advocate for the State submitted that the charge-sheet had been filed. Prima facie case had been established against the petitioners to be dealt at the trial and therefore the revisional application must be dismissed.

11. Section 21 and 22 of the Mines and Minerals (Development & Regulation) Act, 1957 state as follows:-

**“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.]*

*[Explanation.—On and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021, the expression “raising, transporting or causing to raise or transport any mineral without any lawful authority” occurring in this section, shall mean raising, transporting or causing to raise or transport any mineral by a person without prospecting licence, mining lease or composite licence 3 [exploration licence] or in contravention of the rules made under section 23C.]*

**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.”*

12. Section 378 and 379 of the Indian Penal Code state as follows:-

**“Section 378. Theft.** – *Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.*

*Explanation 1.*—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

*Explanation 2.*—A moving effected by the same act which effects the severance may be a theft.

*Explanation 3.*—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

*Explanation 4.*—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

*Explanation 5.*—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

#### *Illustrations*

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the highroad, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft."

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

**Section 379. Punishment for theft.**- Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

13. In the case of **Kanwar Pal Singh v. State of U.P.**<sup>1</sup>, the following was held by the Hon'ble Supreme Court:-

**"11.** As noticed above, in the written submissions the appellant has relied upon Belsund Sugar Co. Ltd. [Belsund Sugar Co. Ltd. v. State of Bihar, (1999) 9 SCC 620] , Sharat Babu

<sup>1</sup>(2020) 14 SCC 331

*Digumarti [Sharat Babu Digumarti v. State (NCT of Delhi), (2017) 2 SCC 18 : (2017) 1 SCC (Cri) 628] and Suresh Nanda [Suresh Nanda v. CBI, (2008) 3 SCC 674 : (2008) 2 SCC (Cri) 121] to contend that where there is a special Act dealing with a special subject, resort cannot be taken to a general Act. The said submission has no force in view of the ratio in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] as quoted above which specifically refers to Section 26 of the General Clauses Act and states that the offence under Section 4 read with Section 21 of the MMDR Act, 1957 is different from the offence punishable under Section 379 IPC. Thus, they are two “different” and not the “same offence”. It would be relevant to state here that the Delhi High Court in its decision in Sanjay v. State [Sanjay v. State, 2009 SCC OnLine Del 525 : (2009) 109 DRJ 594] , which was impugned in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] , had accepted an identical argument to hold that once an offence is punishable under Section 21 of the MMDR Act, 1957, the offence would not be punishable under Section 379 IPC. This reasoning was rejected by this Court and the judgment of the Delhi High Court was reversed. The contention relying on the same reasoning before us, therefore, must be rejected.*

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14. We would again advert to the decision in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] , which had overruled the decision of the Calcutta High Court in Seema Sarkar v. State [Seema Sarkar v. State, 1994 SCC OnLine Cal 277 : (1995) 1 Cal LT 95] wherein the High Court held the proceedings to be invalid and illegal as the Magistrate had taken cognizance on the basis of a charge-sheet submitted by the police under Section 21(2) of the MMDR Act, 1957 and Section 379 IPC, observing that the cognizance was one that cannot be split or divided. The High Court had further observed that as the complaint was not made in terms of Section 22 of the MMDR Act, 1957, the cognizance was bad and contrary to law. We have already noted the decision of the Delhi High Court which had directed that FIR should not be

*treated as registered under Section 379 IPC but only under Section 21 of the MMDR Act, 1957. These decisions of the Calcutta High Court and the Delhi High Court were reversed and set aside by this Court in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] after referring to Section 26 of the General Clauses Act and the meaning of the expression “same offence”, to observe that the offence under Section 21 read with Section 4 of the MMDR Act, 1957 and Section 379 IPC are different and distinct. The aforesaid reasoning compels us to reject the contention of the appellant that the action as impugned in the FIR is a mere violation of Section 4 which is an offence cognizable only under Section 21 of the MMDR Act, 1957 and not under any other law. There is no bar on the court from taking cognizance of the offence under Section 379 IPC. We would also observe that the violation of Section 4 being a cognizable offence, the police could have always investigated the same, there being no bar under the MMDR Act, 1957, unlike Section 13(3)(iv) of the TOHO Act.”*

15. The Hon’ble Supreme Court held the following in **Jayant v. State of M.P.**<sup>2</sup>:-

**“8.2.** *This Court in Sanjay case [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] further observed in paras 60 and 69 as under: (SCC pp. 809 & 811)*

*“60. There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Similarly, Article 51-A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for all the living creatures. In view of the constitutional provisions, the doctrine of public trust has become the law of the land. The said doctrine rests on the principle that*

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<sup>2</sup>(2021) 2 SCC 670

*certain resources like air, sea, water and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership.*

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*69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the riverbed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. It also weakens riverbeds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the groundwater levels.”*

**8.3.** *That thereafter, after considering the relevant provisions of the MMDR Act, this Court opined that there is no complete and absolute bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offence. Ultimately, this Court concluded in paras 72 and 73 as under: (SCC p. 812)*

*“72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons*

*for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure.*

*73. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the riverbeds without consent, which is the property of the State, is a distinct offence under IPC. Hence, for the commission of offence under Section 378 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. Consequently, the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled. Consequently, these criminal appeals are disposed of with a direction to the Magistrates concerned to proceed accordingly.”*

16. The following was observed by the Hon’ble Supreme Court in **State (NCT of Delhi) v. Sanjay**<sup>3</sup>:-

*“71. However, there may be a situation where a person without any lease or licence or any authority enters into river and extracts sand, gravel and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is*

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<sup>3</sup>(2014) 9 SCC 772

*liable to be punished for committing such offence under Sections 378 and 379 of the Penal Code.*

**72.** *From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure.”*

17. The illegal extraction of the sand from the riverbed and disposal of the same for wrongful gain can be complained against and the prosecution is empowered to exercise its duties thereof.
18. The contention of the Learned Advocate for the petitioners in view of the decisions of the Hon'ble Supreme Court as stated cannot be sustained accordingly.
19. The complaint filed in the instant case with the allegation of theft under Section 379 of the Indian Penal Code and Section 21 of the Mines and

Minerals (Development & Regulation) Act, can be acted upon and taken cognizance of by the Learned Magistrate.

20. The materials on record as placed by the Learned Advocate for the State included a memo of evidence and case diary. The charge-sheet filed by the Investigating Officer did not state seizure of sand from the custody of the petitioners. The labourers alleged to have extracted the sand from the canal could not be traced.
21. The preliminary statements recorded in the case diary did not indicate any incriminating act on the part of the petitioners to have premeditatingly conspired to extract and withdraw the sand from the canal to an undisclosed location for wrongful gain. Apparently, it was stated that the sand at the estuary impeded the movement of the boats carrying the fish.
22. Moreover, such removal of sand was informed to the concerned authority on behalf of the Association comprising the petitioners as the members. The sand so extracted was piled up at a low land in the proximity. Charge-sheet did not mention the recovery of sand from the possession or confines of the petitioners.
23. The complaint questioned the act of the petitioners to extract the sand without obtaining permission from the appropriate authority and not theft of the same. The complaint itself along with the charge-sheet did not reveal commission of cognizable offence to indict the petitioners. Moreover, the act of the petitioners does not fall within the stipulated commission or omission to attract the penalties of Section 21 of the Mines and Minerals (Development & Regulation) Act.

24. The proceedings to be allowed to continue will prejudice the petitioners as well as affect the functioning of the Court already burdened with case load.
25. In view of the above discussions, the proceedings of G.R. Case No. 315 of 2011, pending before the Learned Judicial Magistrate 3<sup>rd</sup> Court, Contai arising out of Digha Mohona Coastal Police Station Case No. 1/2011 dated 20.04.2011 under Section 379 of the Indian Penal Code read with Section 21 of the Mines and Minerals (Development & Regulation) Act, 1957 is quashed.
26. Under such circumstances, the instant criminal revisional application being CRR 314 of 2014 is allowed.
27. Accordingly, CRR 314 of 2014 stands disposed of.
28. There is no order to costs.
29. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
30. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Ananya Bandyopadhyay, J.)**