IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 14306 of 2021

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BHAVIK KANJIBHAI SANGHAR
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MS. KRUTI M SHAH(2428) for the Applicant(s) No. 1
NOTICE NOT RECD BACK for the Respondent(s) No. 2
PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 01/04/2024
ORAL ORDER

1. By invoking inherent jurisdiction of this Court under Section 482 of the Cr.P.C. the applicant - original accused Bhavik Kanjibhai Sanghar, has preferred this application thereby he is seeking quashment of the Criminal Case No.375 of 2022 pending before the Magisterial Court at Mandvi, Kutch Bhuj.

2. Brief facts giving rise to present application are that on 28.07.2021 based on on the secret information the Police personnel of the Mandavi Police Station raided the place where the illegal mining activities were undertaken by the applicant accused and others. The role of the applicant in the alleged offence is to the effect that for operation of illegal mining activities he provided the machine to the worker. After following the procedure, the

FIR came to be registered with Mandavi Police Station for the offence punishable udner Sections 379 and 114 of the IPC and during the investigation, the provision of the Mines and Mineral (Regulation in Development) Act, 1957 and Rules thereunder have been added and accordingly the applicant and others have been charge-sheeted for the offence punishable under Sections 379 and 114 of the IPC and section 4(1)(A) and 21 of the Mines and Mineral (Regulation in Development) Act, 1957 and Rule-3 of the Gujarat Mineral (Prevention of Illegal Mining Storage and Transportation) Rules 2017. On receiving the said charge-sheet the Criminal Case No. 375 of 2022 being registered on the file of Additional Judicial Magistrate Court at Mandvi Gandhidham, Kutch.

3. By filing this quashing petition, the counsel appearing for the applicant Ms. Kruti Shah has raised the technical issue that for the offences under the provision of MMDR Act and Rules made thereunder, the Court could not have take cognizance of the offence as there is legal bar to take cognizance by the Court when the charge-sheet is filed on the basis of FIR. By drawing the attention of this Court to the legal provision namely section 22 of the MMDR Act

she would urge that no Court shall take cognizance of any offence punishable under the MMDR Act and Rules thereunder except upon complaint in writing made by person authorized in this behalf by the Central or State Government.

4. In view of the bar as contemplated under Section 22 of MMDR Act, Ms. Kruti Shah, learned counsel has submitted that the Court having no jurisdiction to take cognizance offence as no complaint as provided under Cr.P.C. is being filed by the authorized person, and therefore, in view of the express legal bar for the continuation of the proceedings, the proceedings qua the applicant is required to be quashed and set aside.

5. On the other hand, learned APP Ms. Chetna Shah would urge that despite the filing of the charge-sheet on the basis of FIR, still Court has taken cognizance of the offence, and therefore, instead of filing the application before the Court concerned the applicant rushed to the High Court, and therefore, in view of the alternative remedy, this application is premature and may not be entertained at this stage.

6. Having regard the peculiar facts and circumstances of the present case, this Court finds merits in the submission raised by the learned counsel Ms. Kruti Shah. In the facts of the present case no complaint is filed by the authorized person. Thus, therefore, case is covered by the judgment of the Apex Court delivered in case of ***Jayant and others v. State of Madhya Pradesh (AIR Online 2020 SC 581)***. In the judgment of Jayant and others, the Apex Court has clarified that the offence under the IPC are distinct and different offence.

7. In view of the legal express bar as contemplated under section 22 of the MMDR Act for taking cognizance for the Court and ratio laid down in the case of Jayant & others (supra) the proceedings of the Criminal Case No. 375 of 2022 arises out of the aforesaid FIR for the alleged offences as referred above is quashed qua the applicant accused Bhavik Kanjibhai Sanghar. However, the authorized person as referred under Section 22 of MMDR Act is at liberty to file a fresh proceedings including the offence of theft in accordance with law.

(ILESH J. VORA,J)

Manoj Kumar Rai