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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 24.01.2024

Pronouncing orders on : 29.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.Nos.646, 661, 668, 681 & 1146 of 2024

Crl.O.P.No.646 of 2024

Annadurai

...Petitioner

vs.

The Inspector of Police,
Kurisilapet Police station,
Thirupathur District.

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the docket order passed by the Learned Judicial Magistrate No.II, Thirupathur, Thirupathur District in Crl.M.P.Register.No.8136/2023 in Crime No.93/2023 dated 07.11.2023 and consequently ordered to release the petitioner's Mahindra and Mahindra registered Tactor bearing registration No.TN-16-5625 and unregistered Trailer, which was seized by the respondent on 02.07.2023.

Crl.O.P.No.661 of 2024

Anbu

...Petitioner

vs.

The Inspector of Police,
Kandam Police station,



Thirupathur District.

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the docket order passed by the Learned Judicial Magistrate No.II, Thirupathur, Thirupathur District in Crl.M.P.Register.No.8140/2023 in Crime No.237/2023 dated 07.11.2023 and consequently ordered to release the petitioner's Ashok Leyland Lorry bearing registration No.TN-60-J-4281, which was seized by the respondent on 25.03.2023.

Crl.O.P.No.668 of 2024

Venkatesan

...Petitioner

vs.

The Inspector of Police,
Kandili Police station,
Thirupathur District.

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the docket order passed by the Learned Judicial Magistrate No.II, Thirupathur, Thirupathur District in Crl.M.P.Register.No.8187/2023 in Crime No.342/2023 dated 08.11.2023 and consequently ordered to release the petitioner's Ashok Leyland Tipper Lorry bearing registration No.TN-54-P-7419, which was seized by the respondent on 09.09.2023.

Crl.O.P.No.681 of 2024

Anbu

...Petitioner



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The Inspector of Police,
Kandili Police station,
Thirupathur District.

vs.

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the docket order passed by the Learned Judicial Magistrate No.II, Thirupathur, Thirupathur District in Crl.M.P.Register.No.8138/2023 in Crime No.237/2023 dated 07.11.2023 and consequently ordered to release the petitioner's JCB Yellow Colour (Side Shift Backhole Loader) bearing registration No.TN-97-A-6868, which was seized by the respondent on 25.03.2023.

Crl.O.P.No.1146 of 2024

Sathiyaraj

...Petitioner

vs.

The Inspector of Police,
Thirupathur Taluk Police station,
Thirupathur District.

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the docket order passed by the Learned Judicial Magistrate No.II, Thirupathur, Thirupathur District to taken on file in Crl.M.P.Register.No.7876/2023 in Crime No.427/2023 dated 30.10.2023 and consequently ordered to release the petitioner's JCB bearing registration No.TN-93-B-5280, which was seized by the respondent on 30.07.2023.



In all CrI.O.Ps

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For Petitioners : Mr.E.Kannadasan

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor

Mr.S.Thiruvengadam
Secretary, MBA
(to assist the Court)

COMMON ORDER

These criminal original petitions have been filed challenging the docket order passed by the learned Judicial Magistrate No.II, Thirupathur, refusing to entertain the application filed by the petitioners seeking for the release of vehicle on the ground that such an application can be filed only before the Special Court as per the judgment of this Court in W.P(MD)No.14341 of 2022, dated 13.06.2023.

2.When two of the petitions came up for hearing on 18.01.2024, this Court passed the following order:

These petitions have been filed challenging the docket order passed by learned Judicial Magistrate II, Thirupathur, refusing to entertain the application filed for release of vehicles which were involved in offence u/s.21(1) of the Mines and



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Minerals (Development & Regulation) Act, 1957, on the ground that such an application is not maintainable as per the order passed by this Court in W.P.(MD) No.14341 of 2022, dated 13.06.2023.

2. Apart from these cases, there seems to be some confusion with respect to the following two issues:

- (a) Whether the Special Court has the original jurisdiction to take cognizance of the final report or the procedure u/s.193 Cr.P.C. must be followed by committing the case from the Court of the learned Magistrate to the Special Court; and*
- (b) Insofar as filing an application for return of vehicle is concerned, whether such an application has to be filed before the Magistrate Court or before the Special Court.*

*3. The judgment of the Full Bench in W.P.(MD) No.14341 of 2022, dated 13.06.2023 and the judgment of Hon'ble Mr.Justice K.K.Ramakrishnan made in Crl.RC (MD) No.470 of 2023 etc. batch, dated 11.10.2023, requires reconsideration in view of the judgment of the Apex Court in **Pradeep S. Wodeyar vs. The State of Karnataka** in Crl.A.No.1288 of 2021 etc., dated 29.11.2021. The Apex Court, in no uncertain terms, has held that the Special Court does not have the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate u/s.209 Cr.P.C. In the light of this judgment, the*



application for release of vehicle will lie only before the Magistrate Court, as is done in all the other criminal cases. Likewise, the final report will only lie before the Magistrate and thereafter, it has to be committed to the Sessions Court/Special Court since there is no provision under the MMDR Act which confers the Sessions Court/Special Court the power to directly take cognizance of the offence under the MMDR Act.

4. The law on this issue has to be clarified at the earliest in order to avoid any further confusion in these cases.

5. Post these cases under the caption 'for orders' on 24.01.2024 at 02.15 p.m.

Apart from learned counsel for petitioner and learned Additional Public Prosecutor, the Bar is also requested to assist this Court to clarify this position.

3.Pursuant to the above order, the matter was posted for hearing today and this Court heard Mr.E.Kannadasan, learned counsel appearing on behalf of the petitioners, Mr.A.Damodaran, learned Additional Public Prosecutor appearing on behalf of the respondents and Mr.S.Thiruvengadam, Secretary, Madras Bar Association, who assisted the Court.

4.In the course of the past few weeks, this Court has noticed the large-



scale confusion prevailing in the State over the issue as to whether the Special Court under the Mines and Minerals (Development & Regulation Act, 1957 (hereinafter referred to as “**the MMDR, 1957**”) could directly take cognizance of offences under the Act and secondly, whether the Special Court under the MMDR Act, 1957 was the competent court to deal with confiscation and release of vehicles etc under Section 21 of the Act.

5. When the matter came up on 18.01.2024, this Court expressed a *prima facie* view that certain observations in the decision of the Full Bench in **S. Kumar v District Collector** (2023) 3 MLJ (Cri) 536 appeared to run counter to at least three decisions of the Supreme Court, warranting a closer re-look at the law. That apart, the attention of this Court was also drawn to a recent decision of K.K Ramakrishnan, J in **Ramar v The State** (Cr R.C MD 470 of 2023) dated 11.10.2023 where the learned judge, in the course of a long eulogy on the ill-effects of sand mining, had directed initiation of confiscation proceedings before the Court of the Principal District and Sessions Judge. Having examined this decision, this Court was of the considered opinion that this decision could not be reconciled with the plain words of Section 21(4-A) of the MMDR Act, 1957 as well as the law laid down by the Supreme Court.



determination:

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- i. Whether the Special Court has the original jurisdiction to take cognizance of the final report or the procedure u/s.193 Cr.P.C. must be followed by committing the case from the Court of the learned Magistrate to the Special Court; and*
- ii. Insofar as filing an application for return of vehicle is concerned, whether such an application has to be filed before the Magistrate Court or before the Special Court;*

7. To set the discussion in context, it is first necessary to set out the relevant legal provisions. The MMDR Act, 1957 is an Act to enable the Union to take control of the regulation of mines and the development of minerals. Section 4 of the Act gives effect to this object by declaring that no person shall undertake reconnaissance, prospecting, or mining operation in any areas except under a license or lease granted under the Act and the Rules. Section 21 deals with penalties, and in so far as it is relevant to the present case, reads as follows:

21. Penalties.—(1) *Whoever contravenes the provisions of sub-section (1) or sub-section (1-A) 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*



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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.

(4-A) 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).....



(6).....”

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8. From a plain reading of Section 21(4-A), it is clear that the power of confiscation and disposal lies with the Court **competent to take cognizance of the offence** under Section 21(1). A crucial aspect which appears to have completely missed the attention of the previous benches of this Court is that the power of confiscation under Section 21(4-A) lies with the Court **competent to take cognizance of the offence** and not the Court **competent to try the offence** under Section 21(4-A). This vital distinction between a “*a court competent to take cognizance*” and “*a court competent to try*” has unfortunately been lost sight of leading to complete chaos.

9. The key to finding the competent Court for the purposes of Section 21(4-A) lies in ascertaining the Court competent to take cognizance under Section 21(1) of the MMDR Act, 1957. For this purpose, we must first turn to Section 22 of the Act which reads as follows:

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.*



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10. It is also necessary to notice Sections 30-B and 30-C of the MMDR Act, 1957 which were inserted vide the Amendment Act (Act 10 of 2015). These provisions provide for the constitution of Special Courts which are invested with the power of a Court of Session. Prior to the insertion of Sections 30-B and 30-C complaints under the MMDR Act were being filed before the Court of the Magistrate which was the Court competent to take cognizance as well as try the offence. Section 30-B and 30-C reads as follows:

30-B. Constitution of Special Courts.—(1) *The State Government may, for the purposes of providing speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section (1-A) of Section 4, constitute, by notification, as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.*

(2) *A Special Court shall consist of a Judge who shall be appointed by the State Government with the concurrence of the High Court.*

(3) *A person shall not be qualified for appointment as a Judge of a Special Court unless he is or has been a District and Sessions Judge.*

(4) *Any person aggrieved by the order of the Special Court may prefer an appeal to the High Court within a period of sixty days from the date of such order.]*

30-C. Special Courts to have powers of Court of Session.—*Save as otherwise provided in this Act, the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to the proceedings before the Special Court and for the purpose of the provisions of this Act,*



the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a public prosecutor.”

11.From a combined reading of Sections 30-B and 30-C of the Act, the following propositions emerge:

- a)Special Courts constituted under Section 30-B are for speedy “trial” of offences under the Act.
- b)The Special Court is deemed to be a Court of Session and shall have the powers of a Court of Session under the Code of Criminal Procedure, 1973.
- c)Save as provided by the Code, proceedings before the Special Court are to be governed by the Code of Criminal Procedure, 1973.

12.It is well settled that a Court of Session has no power to directly take cognizance as a Court of original jurisdiction unless the case is committed to it by the Magistrate. Section 193 Cr.P.C makes this position very clear and reads as under:

“193. Cognizance of offences by Courts of Session.—

Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall



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take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

13. In ***Gangula Ashok v. State of A.P., (2000) 2 SCC 504***, the Supreme Court held that there was an absolute bar on the Sessions Court from taking cognizance of an offence without an order of committal by the Magistrate. The Court speaking through K.T Thomas, J observed:

“11. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straight away be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session.”

16. Hence we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the



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Magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straight away be laid down before the Special Court under the Act.”

14. In view of the above legal position, Special Courts under certain special statutes like the Prevention of Corruption Act, 1988, the SC/ST Act, 1989 and the POCSO Act, 2012 which enjoy the status and powers of a Court of Sessions have been specially vested with the power to take cognizance of offences under those Acts without there being an order of committal (See Section 14 of the SC/ST Act and Section 33 of the POCSO Act, 2012). Admittedly, even though Sections 30-A and 30-B were inserted in 2015 no corresponding provision like Section 33 of the POCSO Act, 2012 was inserted in the MMDR Act, 1957 enabling the Special Court to directly take cognizance of offences under Section 21(1) of the Act. The position is now put beyond controversy by the decision of the Supreme Court in ***Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62***, where Dr. D.Y Chandrachud, J (as the learned Chief Justice then was) has observed as under:

“38. Section 193CrPC states that the Sessions Court shall not take cognizance of an offence as a court of original jurisdiction unless the Magistrate commits the case to it. The only exception is if it is expressly provided otherwise by the Code or



the statute. Neither the Code nor the MMDR Act provide that the Special Court could directly take cognizance of the offences. Therefore, the Sessions Court did not have the authority to take cognizance.”

Thus, the Special Court under the MMDR Act, 1957 cannot take cognizance of an offence under the Act without an order of committal by the Magistrate. Consequently, the expression “*court competent to take cognizance*” occurring in Section 21 (4-A) of the MMDR Act, 1957 is the Court of the Magistrate and not the Special Court.

15. Since the prosecution under Section 21(1) is commenced through a complaint by the authorised officer in terms of Section 190(1)(a) Cr.P.C, it is now necessary to examine the issue as to which is the competent court before which the complaint ought to be laid for offences under the MMDR Act, 1957. The Full Bench in ***S. Kumar v District Collector*** (2023) 3 MLJ (Cri) 536 and K.K Ramakrishnan, J in ***Ramar v The State*** (Cr R.C MD 470 of 2023), have concluded that the complaint ought to be filed before the Special Court. Unfortunately, and with all due respect the decisions of the Supreme Court appear to state the opposite.

16. In ***State (NCT of Delhi) v. Sanjay***, (2014) 9 SCC 772, the Supreme



Court speaking through Justice M.Y Eqbal had observed as under:

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“70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.”

17. This decision was followed in **Kanwar Pal Singh v. State of U.P., (2020) 14 SCC 331**. Recently in **Jayant v. State of M.P., (2021) 2 SCC 670**, the Supreme Court has held as under:



“10. While considering the aforesaid issue, Section 22 of the MMDR Act is required to be referred to, which is 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.”

Reading the aforesaid provision would show that cognizance of any offence punishable under the MMDR Act or the Rules made thereunder shall be taken only upon a written complaint made by a person authorised in this behalf by the Central Government or the State Government. Therefore, on a fair reading of Section 22 of the MMDR Act, the bar would be attracted when the Magistrate takes cognizance.

16. Even as observed by this Court in R.R. Chari [R.R. Chari v. State of U.P., 1951 SCC 250 : AIR 1951 SC 207] , even the order passed by the Magistrate ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. As observed by the Constitution Bench of this Court in A.R. Antulay [A.R. Antulay v. Ramdas Srinivas Nayak, (1984) 2 SCC 500 : 1984 SCC (Cri) 277] , filing of a complaint in court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint. Therefore,



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when an order is passed by the Magistrate for investigation to be made by the police under Section 156(3) of the Code, which the learned Magistrate did in the instant case, when such an order is made the police is obliged to investigate the case and submit a report under Section 173(2) of the Code. That thereafter the investigating officer is required to send report to the authorised officer and thereafter as envisaged under Section 22 of the MMDR Act the authorised officer as mentioned in Section 22 of the MMDR Act may file the complaint before the learned Magistrate along with the report submitted by the investigating officer and at that stage the question with respect to taking cognizance by the learned Magistrate would arise.

18. From a reading of the aforesaid decisions of the Supreme Court, it is clear that a complaint under Section 21(1) must be made only before the Court of the Magistrate and that the Magistrate alone is competent to take cognizance of offences under the MMDR Act, 1957. It goes without saying that the Magistrate must thereafter commit the case to the Special Court under Section 209 Cr.P.C for trial.

19. It is now necessary to notice the decisions of this Court which have taken a contrary view. In ***Muthu v District Collector*** (2018 SCC Online Mad 13985), a Division Bench issued a slew of directions concerning cases relating to sand mining. The Division Bench correctly opined that the authority



competent to deal with confiscation proceedings under the Act is the Court and not the authorised officer. The Division Bench has observed as under:

“7. Section 21(4) of the Act deals with the power to seize any vehicle, equipment or tool involved in illicit mining by an officer or an authority specially empowered. As per Section 21(4-A), such a vehicle, equipment, tool or mineral shall be liable to be confiscated by the order of the Court, competent to take cognizance. We may note Section 21(4-A) of the Act consciously uses the word ‘shall’ while dealing with confiscation. Therefore, if the Court concerned is of the view that any vehicle, mineral, tool, equipment or any other things seized, is involved with any violation, then, it has to be followed by confiscation and disposal.”

The Division Bench then went on to observe:

*“10. **Section 30-B of the Act specifies the Court which can take cognizance.** Therefore, whenever a vehicle is seized for contravention and whenever mineral is also seized, the only option open to the authority is to file a private complaint as mandated under Section 30-B. Therefore, there is no power or authority that lies with the revenue officials to release the vehicle after seizure. There is a difference between a power exercised for seizure and confiscation. While the statute provides for power to seize by a revenue authority, it does not provide so, for*



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confiscation, which is specifically assigned to the jurisdictional Court, which assumes it on a complaint made by an authorised officer. As stated above, this position applied to all instruments, machineries, vehicle and the mineral.”

20. With all due respect, Section 30-B of the Act provides for the constitution of Special Courts for speedy trial and does not deal with cognizance at all. This is because a Special Court is deemed to be a Court of Session under Section 30-C with the result that it is barred from directly taking cognizance because of Section 193 Cr.P.C. Turning to the directions issued by the Division Bench in **Muthu**, directions (xv) and (xvi) read as follows:

“(xv) In so far as the seized vehicles are concerned, they shall be produced before the concerned Magistrate Court by the revenue authorities at the time of filing their respective complaints.

(xvi) Any application for release of vehicle etc., can only be filed before the Special Court above.”

Direction (xv) mandates the production of the seized vehicle before the concerned Magistrate Court at the time of filing of the complaint. However, as noticed above, in paragraph 10 the Division Bench had directed all complaints to be filed before the Special Court under Section 30-B which is in direct conflict with direction (xv) which directs the seized vehicles to be produced



before the Magistrate at the time of filing the complaint. Direction (xvi) is equally confusing as it directs petitions for release to be filed before the Special Court. It passes comprehension as to how a petition for release can be filed before the Special Court in terms of direction (xvi) when the seized vehicle is in the custody of the Magistrate in terms of direction (xv). One is left to ponder as to how the Special Court was expected to release a vehicle which is not even in its custody.

21. Amidst this confusion, a batch of review petitions came to be filed against the order in ***Muthu v District Collector*** (2018 SCC Online Mad 13985). By an order dated 10.10.2019 passed in Review Petition (MD) 80-82 of 2019, the Division Bench reviewed its earlier decision and passed the following directions:

“(i) The Secretary to Government, Industries Department, Fort St. George, Chennai is directed to issue proper directions either by way of order or circular to all the persons authorized to exercise the power to seizure indicating the manner and the circumstances under which the power of compounding is to be exercised sparingly;

(ii) The designated Courts are directed to deal with the question of confiscation or release of the vehicles on receipt of the



private complaint or seizure report from the person authorized, notwithstanding the exercise of power of compounding. *The persons authorized are directed to comply with the earlier directions with reference to making the private complaints.*”

22. From the aforesaid, it is clear that the Division Bench once again proceeded on the footing that a complaint could be filed directly before the Special Court (on the assumption that the Special Court could take cognizance directly), and the said Court could deal with confiscation proceedings in terms of Section 21(4-A) of the MMDR Act, 1957. ***Muthu v District Collector*** (2018 SCC Online Mad 13985) was delivered on 29.10.2018 and the order in the review application was delivered on 09.09.2019. Unfortunately, the Division Bench did not have the benefit of the decision of the Supreme Court in ***Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62***, which was delivered on 29.11.2021. Paragraph 38 of this decision has now set the controversy at rest by holding that a Special Court under the MMDR Act does not have the power to take cognizance of an offence under the Act without there being an order of committal passed by the Magistrate. Consequently, the directions in ***Muthu v District Collector*** (2018 SCC Online Mad 13985), to the extent that it directs the filing of complaints for offences under the MMDR Act before the Special Court and the confiscation or release of vehicles at the time of filing such



complaints, cannot be said to be good law.

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23. Turning to the decision of the Full Bench in ***S. Kumar v District Collector*** (2023) 3 MLJ (Cri) 536, in paragraph 89 of the judgment reads as follows:

“89. Sub-section (4-A) relates to the consequential act of confiscation of the mineral, tool, equipment, vehicle or any other thing seized u/s (4), which can be ordered by a Court competent to take cognizance of the offence under sub-section (1). Therefore, on the question of confiscation, there is no quarrel and, in fact, the decision in Muthu's case is clear that confiscation can only be ordered by the Court and not by any other authority. Therefore, no deliberation is required on this aspect.”

The above conclusion that the power of confiscation lies with the Court and not with any other authority is undoubtedly correct. That apart, the Full Bench has also correctly noticed that confiscation “*can be ordered by a Court competent to take cognizance of the offence under sub-section (1)*” which after the decision in ***Pradeep S. Wodeyar v. State of Karnataka***, (2021) 19 SCC 62 is the Magistrate and not the Special Court under the MMDR Act, 1957. In paragraph 198(iv) of its conclusions, the Full Bench has directed the private



complaint filed under Section 21 of the Act to be filed before the “*court of competent jurisdiction*” which again in the light of the decision in ***Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62*** is the Magistrate and not the Special Court under the MMDR Act, 1957.

24. Having held as above, the Full Bench has issued various directions two of which in paragraphs 198 (v) and (vi) are as follows:

“(v) While the Special Court alone is entitled and empowered to try the offences under the MMDR Act, however, the power of the Special Court would be only in relation to confiscation and release of the vehicle, which has been seized and insofar as compounding of offence is concerned, it would be within the domain of the persons authorised u/s 22 of the MMDR Act, who would have authority and the Court has no role to play in the matter of compounding. Further, the Special Courts constituted under the MMDR Act shall jointly try the offences under the MMDR Act as well as the offence u/s 379 IPC so as to avoid any possible conflict in the decision.

(vi) In view of the aforesaid finding of this Court with regard to joint trial by the Special Court, this Court directs the police authorities, who have registered FIR for the offence



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u/s 379 IPC to file the final report and the person authorised u/s 21 (4), who has seized the vehicle to file, private complaint before the concerned Magistrate Court/Special Court and in case the police officer has seized the vehicle u/s 21 (4) of the MMDR Act and also lodged the FIR u/s 379 IPC, to file final report and private complaint before the concerned Magistrate Court/Special Court, within a period of three months from the date of this order. Upon filing of the final report by the police authorities, the concerned Magistrate is directed to commit the case forthwith to the Special Court having jurisdiction. The Special Courts, which have received the private complaints filed by the person authorised under the MMDR Act shall take up the case along with the case committed in respect of IPC offences, if any, relating to the same offender jointly and shall complete the trial as expeditiously as possible upon filing of private complaint/committal of the case.”

25.The direction in paragraph 198(v) that confiscation proceedings can be initiated before the Special Court runs counter to the observations in paragraph 89 of the judgment where the Full Bench has observed that confiscation “*can be ordered by a Court competent to take cognizance of the offence under sub-section (1)*”. This is also clear from a plain reading of Section 21(4-A). Since the Special Court cannot take cognizance of the offence in the light of paragraph 38 of the decision of the Supreme Court in **Pradeep S.**



Wodeyar v. State of Karnataka, (2021) 19 SCC 62, the Court of the Magistrate

would be the jurisdictional Court under Section 21 (4-A) for confiscation/release etc.

26.As regards paragraph 198(vi) the Full Bench has observed:

“The Special Courts, which have received the private complaints filed by the person authorised under the MMDR Act shall take up the case along with the case committed in respect of IPC offences, if any, relating to the same offender jointly and shall complete the trial as expeditiously as possible upon filing of private complaint/committal of the case.”

This direction is again directly in conflict with the decision of the Supreme Court in **Jayant v. State of M.P., (2021) 2 SCC 670**(extracted in para 13, *supra*) which has held that the complaints ought to be filed by the authorised officer only before the Magistrate. That apart, in view of paragraph 38 of the decision in **Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62**, a complaint cannot be directly filed before the Special Court since the said Court cannot directly take cognizance of the offences in said complaint without an order of committal. This crucial paragraph was unfortunately not brought to the notice of the Full Bench. Consequently, the complaint by the



authorised officer under the MMDR Act, 1957 must be filed before the jurisdictional Magistrate Court and not the Special Court. The aforesaid directions in ***S. Kumar v District Collector*** (2023) 3 MLJ (Cri) 536, being in conflict with the decisions of the Supreme Court must yield to the command of Article 141 of the Constitution.

27. This Court did ponder as to whether a reference ought to be made since the inconsistencies noticed were that of a judgment of a Full Bench of this Court, which would ordinarily bind this Court. However, the Court has been spared the task since the points involved are directly covered by the decisions of the Supreme Court. Where the decision of the High Court is not in consonance with the decisions of the Supreme Court the said decision would be per incuriam. In *Sundeep Kumar Bafna v. State of Maharashtra*, (2014) 16 SCC 623, the Supreme Court has pointed out as under:

“19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of



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the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court.”

That apart, as was pointed out by the Supreme Court in ***Shah Faesal v. Union of India*, (2020) 4 SCC 1**, references take up substantial judicial time and should not be made in a casual and cavalier manner especially when the issues are already covered by the decisions of the Supreme Court.

28. We now come to the decision of K.K Ramakrishnan, J in ***Ramar v The State*** (Cr R.C MD 470 of 2023) dated 11.10.2023. The learned judge has referred to paragraph 198(vi) of the judgment of the Full Bench in ***S. Kumar v District Collector*** (2023) 3 MLJ (Cri) 536, and has observed as follows:

“investigating officer has power to prefer the private complaint before the learned Special Judge namely the Principal Sessions Judge of each district under Section 21 of the Mines and Minerals Act against the accused. The said investigating officer has also got power to submit application to initiate the confiscation proceedings against the vehicles involved in the illegal mining activity.”



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For the reasons indicated in paragraph 18, supra, these observations are in conflict with the decisions of the Supreme Court. The learned judge then goes on to observe:

“10.2. From the reading of Section 21(4-A) of the MMDR Act, it is clear that the duty is cast upon the investigating officer or the officials concerned, who seized the vehicle, to initiate the confiscation proceedings before the learned Principal District and Sessions Judge of the District concerned. In spite of the specific directions issued by the Hon'ble Division Bench, timely action has not been taken to confiscate the vehicle involved in illegal transportation of the mines, by implementing of Section 21 (4-A) of the Act.”

29. With all due respect, the aforesaid observations may not reflect the correct legal position. A plain reading of Section 21(4-A) discloses that the power to initiate confiscation proceedings lies before the Court competent to take cognizance of the offence. In view of the discussion in the preceding paragraphs, the Principal District Court cannot directly cognizance of an offence under the MMDR Act in the light of the decision of the Supreme Court in ***Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62*** which has unfortunately not been brought to the notice of the learned judge. Consequently,



the question of initiating confiscation proceedings before the Principal District Court does not arise. A decision which follows a per incuriam decision also does not constitute a binding precedent (See ***Hindustan Construction Co. Ltd. v. Union of India*, (2020) 17 SCC 324**).

30. In view of the aforesaid discussion, the legal position can be summarised as under:

(a) The power to initiate confiscation proceedings and issue directions for release/disposal of the property under Section 21(4-A) of the MMDR Act, 1957 lies with the Court and not with any other authority;

(b) Section 21(4-A) expressly states that the Court competent to initiate confiscation proceedings and issue directions for the disposal of the seized material is the court competent to take cognizance of the offence under Section 21(1) of the Act;

(c) The Special Court constituted under Section 30-B of the MMDR Act, 1957 is invested with the powers of a Court of Session under Section 30-C. Consequently, the Special Court being a Court of Session cannot



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directly take cognizance of an offence under the Act in view of the bar contained in Section 193 Cr.P.C and in the light of the law laid down in paragraph 38 of the decision in ***Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62;***

(d)As a consequence, a complaint under Section 21 of the MMDR Act, 1957 can be filed only before the jurisdictional Magistrate empowered to take cognizance of the offence (***State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, Kanwar Pal Singh v. State of U.P., (2020) 14 SCC 331***and ***Jayant v. State of M.P., (2021) 2 SCC 670***), and not before the Special Court;

(e)Ex-consequenti, the Court for the purposes of Section 21(4-A) is the Court of the Magistrate since it is that Court which is empowered to take cognizance of the offences under Section 21(1). Hence, an application for release of vehicle will lie only before the jurisdictional Magistrate;

(f)The decisions of this Court in ***Muthu v District Collector*** (2018 SCC Online Mad 13985), the order passed in review dated 09.09.2019, the decision of the Full Bench in ***S. Kumar v District Collector*** (2023) 3



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MLJ (Cri) 536 and that of the learned single judge *Ramar v The State* (Cr R.C MD 470 of 2023) dated 11.10.2023, to the extent that it is inconsistent with the decisions of the Supreme Court in *State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772, *Kanwar Pal Singh v. State of U.P.*, (2020) 14 SCC 331 and *Jayant v. State of M.P.*, (2021) 2 SCC 670 and paragraph 38 of the decision in *Pradeep S. Wodeyar v. State of Karnataka*, (2021) 19 SCC 62, as discussed above, do not lay down the correct law.

31. Before drawing the curtains, this Court wants to express its appreciation for the assistance rendered by the Bar to find an answer to the knottee issue involved in this case.

32. In the result, these criminal original petitions are allowed. The impugned orders are set aside. The learned Judicial Magistrate shall now take the applications for release on file and dispose of the same in accordance with law.

29.01.2024

Speaking Order

Index: Yes



Internet: Yes

Neutral Citation: Yes

ssr

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Note: The Registry is directed to return back the original applications in these petitions in order to enable the petitioners to represent the applications before the concerned Court.



To

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- 1.The Judicial Magistrate No.II,
Thirupathur, Thirupathur District.
- 2.The Inspector of Police,
Kurisilapet Police station,
Thirupathur District.
- 3.The Inspector of Police,
Kandili Police station,
Thirupathur District.
- 4.The Inspector of Police,
Thirupathur Taluk Police station,
Thirupathur District.
- 5.The Public Prosecutor
High Court, Madras.



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N.ANAND VENKATESH.J.,

SSR

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