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

CRM-M-11498-2021

Date of Decision: September 24, 2024

MANKARAN SINGH AND ANR

....Petitioner(s)

VERSUS

STATE OF PUNJAB AND ORS

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Raghav Soni, Advocate
for the petitioners.

Mr. Malkiat Singh, DAG, Punjab.

None for respondent No.3.

SANDEEP MOUDGIL, J.(ORAL)

The instant petition is preferred under Section 482 Cr.P.C. seeking quashing of FIR No.56 dated 09.03.2016 under Section 21(1) of Mines and Minerals Act (Regulation and Development) Act, 1957 (hereinafter referred to as 'the MMDR Act, 1957) registered at Police Station City Patti, District Tarn Taran.

Learned counsel for the petitioner would contend relying upon deposit made in pursuance to the demand notice dated 11.05.2016 whereby penalty of Rs.5,80,820/- was imposed stands deposited vide receipt dated 16.05.2016 (Annexure P-3) i.e. a copy of challan with the department of Treasury in the office of DTO/RTO.

The reliance has been made on behalf of the petitioner to Section 23 of the Act which reads as under:-

“[23A. Compounding of offences.--(1) Any offence punishable under this Act or any rule made thereunder may,



either before or after the institution of the prosecution, be compounded by the person authorised under section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify:

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith.]”

In the light of above, on a specific query made to the learned State counsel to short reply dated 19.07.2021 by way of affidavit of Jagir Singh, PPS, Deputy Superintendent of Police, PBI, Special Crime, Tarn Taran, District Tarn Taran in para 4 have admitted the deposit of such penalty through challan dated 16.05.2016. The contents of such affidavit vide para 4 reads as under:-

‘4. That during the course of investigation in the present case, the mining department has imposed penalty/cost of Rs.05,80,820/- upon the petitioners and the petitioners have deposited the above said penalty/cost of Rs.05,80,820/- in the Government treasury through Dalip Build Cone Company through challan No.028903068/115 dated 16.05.2016. As such, the petitioners have suffered the penalty imposed by the mining department due to which the present FIR was recommended to be cancelled by the deponent and the findings of the deponent for the legal opinion were sent to the Deputy District Attorney (Legal) and the Deputy District Attorney (Legal) has opined that in this case, CRM-M-11498 of 2021 is pending in the Hon'ble Punjab and Haryana High Court and the further proceedings should be subject to the final decision of the Hon'ble Punjab and Haryana High Court. Hence, further



proceedings in this regard have been suspended till the decision of the present petition'

In the light of the above it is the admitted position that the penalty stands deposited and in that eventuality the statute provides specific compounding of the offence under Section 23-A of Mines and Minerals Act, 1957, therefore, this Court deems it appropriate not to initiate any further proceedings.

Besides dependence can be placed upon the judgment rendered by the Apex Court in the case of ***Jayant Etc. vs. State of Madhaya pradesh (2021 All SCR (Crl.) 41)*** wherein the Court has held as under:-

11. Now so far as the submission on behalf of the private appellants violators that in view the fact that violators were permitted to compound the violation in exercise of powers under Rule 53 of the 1996 Rules or Rule 18 of the 2006 Rules and the violators accepted the decision and deposited the amount of penalty determined by the appropriate authority for compounding the offences/violations, there cannot be any further criminal proceedings for the offences under Sections 379 and 414 IPC and Sections 4/21 of the MMDR Act and the reliance placed on Section 23A of the MMDR Act is concerned, it is true that in the present case the appropriate authority determined the penalty under Rule 53 of the 1996 Rules Rule 18 of the 2006 Rules, which the private appellants violators paid and therefore the bar contained subsection 2 of Section 23A of the MMDR Act will be attracted. Section 23A as it stands today has been brought on the Statute in the year 1972 on the recommendations of the Mineral Advisory Board which provides that any offence punishable under the MMDR Act or any rul made thereunder may, either before or after the institution of the prosecution, be compounder by the person authorised under section 22 to make a complaint to the court



with respect to tha offence, on payment to that person, for credit to the Government, of such sum as that person may specify. Subsection 2 of Section 23A further provides that where an offence is compounded under subsection (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody shall be released forthwith. Thus, the bar under subsection 2 of Section 23A shall be applicable with respect to offences under the MMDR Act or any rule made thereunder. However, the ba contained in subsection 2 of Section 23A shall not be applicable for the offences under the IPO such as, Section 379 and 414 IPC. In the present case, as observed and held hereinabove, the offences under the MMDR Act or any rule made thereunder and the offences under the IPC are different and distinct offences. Therefore, as in the present case, the mining inspectors prepared the cases under Rule 53 of the 1996 Rules and submitted them before the mining officers with the proposals of compounding the same for the amount calculated according to. the concerned rules and the Collector approved the said proposal and thereafter the private appellants violators accepted the decision and deposited the amount of penalty determined by the Collector for compounding the cases in view of subsection 2 of Section 23A of the MMDR Act and the 1996 rules and even the 2006 rules are framed in exercise of the powers under Section 15 of the MMDR Act, criminal complaints/proceedings for the offences under Sections 4/21 of the MMDR Act are not permissible and are not required to be proceeded further in view of the bar contained in subsection 2 of Section 23A of the MMDR Act. At the same time, as Observed hereinabove, the criminal complaints/proceedings for the offences under the IPC- Sections 379/414 IPC which are held to be distinct and different can be proceeded further, subject to the observations made hereinabove.



Act as it stands today. It might be true that by permitting the violators to compound the offences under the MMDR Act or the rules made thereunder, the State may get the revenue and the same shall be on the principle of person who causes the damage shall have to compensate the damage and shall have to pay the penalty like the principle of polluters to pay in case of damage to the environment. However, in view of the large scale damages being caused to the nature and as observed and held by this Court in the case of Sanjay (supra), the policy and object of MMDR Act and Rules are the result of an increasing awareness of the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature and considering the observations made by this Court in the aforesaid decision, reproduced hereinabove, and when the violations like this are increasing and the serious damage is caused to the nature and the earth and it also affects the ground water levels etc and it causes severe damage as observed by this Court in the case of Sanjay (supra), reproduced hereinabove, we are of the opinion that the violators cannot be permitted to go scot free on payment of penalty only. There must be some stringent provisions which may have deterrent effect so that the violators may think twice before committing such offences and before causing damage to the earth and the nature.

It is the duty cast upon the State to restore the ecological imbalance and to stop damages being caused to the nature. As observed by this Court in the case of Sanjay (supra), excessive instream sand and gravel mining from river beds and like resources causes the degradation of rivers. It is further observed that apart from threatening bridges, sand mining transforms the riverbeds into large and deep pits, as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry. Even otherwise, sand/mines is a public property and the State is the custodian of the said public property and therefore the State should be



more sensitive to protect the environment and ecological balance and to protect the public property the State should always be in favour of taking very stern action against the violators who are creating serious ecological imbalance and causing damages to the nature in any form. As the provisions of Section 23A are not under challenge and Section 23A of the MMDR Act so long as it stands, we leave the matter there and leave it to the wisdom of the legislatures and the concerned States.

12. Now so far as the appeal preferred by the State on the premise that the order passed by the learned Magistrate, confirmed by the High Court, affects the powers of the authorised person to compound the offence, in exercise of powers under Rule 53 of the 1996 Rules and Rule 18 of the 2006 Rules is concerned, the same is absolutely misconceived. By the order passed by the learned Magistrate, confirmed by the High Court, by no stretch of imagination, it can be said that directing to file the first information report/crime case for the offences under the IPC and even for the offences under the MMDR Act and the rules made thereunder, it affects any of the powers of the authorised person to compound the offence. In fact, in view of the decision of this Court in the case of Sanjay (supra), in which this Court has specifically observed and held that so far as the offence under the IPC is concerned, there shall not be any bar under Section 22 of the MMDR Act and when before the High Court the State supported the order passed by the learned Magistrate and rightly so and when the impugned judgment and order passed by the High Court is in favou of the State, as such, the State ought to have filed the special leave petition/appeal.

13. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder visavis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the



cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

- i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned Incharge/ SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;*
- ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;*
- iii) for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder, and thereafter after investigation the concerned incharge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.*
- v) in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section 1 of Section 23A, considering subsection 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings*



against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under subsection 2 of Section 23A shall not affect any proceedings for the offences under the PC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further.

Considering the submissions and the dictum of the Apex Court wherein they have held that if a violator is allowed to settle their offence by paying a penalty under Section 23-A of the MMDR Act, 1957 then according to Section 23-A(2), no further legal action will be taken against him for those specific offences under the MMDR Act, 1957 or its related Rules. However, this Court cannot ignore the another aspect that this protection does not extend to the offences under the IPC such as Section 379 and 411 of IPC. In that regard, if FIR is registered under the Sections they will continue to be prosecuted. Coming to the present case in hand wherein the petitioner is seeking quashing of the FIR registered only under Section 21(1) of MMDR Act, 1957, this Court sees no reason to decline the same as per Section 23-A of the MMDR Act, 1957. Therefore, FIR No.56 dated 09.03.2016 is quashed qua the petitioners.

Petition stands allowed in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

24.09.2024
Sangeeta

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