

KULWANT KAUR

V/S

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Jatinder Jit Kaur, Advocate for
Mr. Ish Puneet Singh, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of FIR No.178 dated 25.10.2017 registered under Section 21(1) Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter 'MMDR Act') at Police Station Ajnala, District Amritsar (Rural) and all subsequent proceedings arising therefrom.

2. Succinctly, the facts are that the petitioner is the owner of 10-12 acres of land in village Chhana, Tehsil Ajnala, District Amritsar. The Authorised Officer (Mining), Ajanala marked a complaint regarding illegal supply of sand to the SHO from the Mining Officer, Block Ajanala. On reaching the spot, the police party found instances suggesting illegal supply of sand however, no mining was seen. A *varma* (machine used to mine sand in water), belonging to the petitioner, was found on the said land.

3. Learned counsel for the petitioner submits that the husband of the

petitioner, namely, Baldev Singh Sirsa is a social activist and has filed multiple petitions regarding illegal mining of sand, illegal occupation of *panchayat* land, plight of sugarcane farmers etc. Due to the nature of his work, he was falsely implicated in FIR No.77 dated 31.05.2015 registered at Police Station Ajnala, District Amritsar. The matter was duly enquired into by DSP (Investigation), Amritsar (Rural) and the husband of the petitioner was found innocent. The land adjoining the land of the petitioner was being illegally mined because of which, she could not use it and suffered loss. The petitioner had filed a suit for recovery of *mesne* profits and damages against the State as well as some private individuals for this reason.

4. Learned counsel for the petitioner further contends that the MMDR Act specifically provides that no Court can take cognizance of an offence under this Act, other than on a written complaint to the Court by the authorized officer, as such, the FIR could not have been registered in the first place. A perusal of the FIR (Annexure P-1) itself would indicate that the police did not witness any illegal mining happening on the said land.

5. Short reply dated 15.03.2024 by way of an affidavit of Raj Kumar, PPS, Deputy Superintendent of Police, Sub-Division Ajnala, Amritsar (Rural) on behalf of respondent No.1-State has been filed and the same is taken on record.

6. Having heard learned counsel for the petitioner and after perusing the record of the case, it transpires that the police party did not find any instances of illegal mining from the spot visit and only a *varma*, allegedly belonging to the petitioner, was found parked on the spot, which in itself does not establish commission of an offence. Further, the Court is barred from taking cognizance of commission of an offence under Section 22 of the MMDR Act, except if a complaint in writing is made on behalf of the Central

Government or the State Government. For proper disposal of the case at hand, it is pertinent to discuss Sections 21 and 22 of the MMDR Act which read 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 subsection (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorized in this behalf by that Government and the State Government or such authorized 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 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 authorized in this behalf by the Central Government or the State Government.

Under Section 21(4A), any vehicle seized under sub-section (4) is liable to be confiscated by an order of the court competent to take cognizance of the offence.

7. Furthermore, Section 41 of the Indian Penal Code read with Section 4 (2) of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) provides that all offences under any other law are to be investigated, inquired into and otherwise dealt with in accordance with the provisions of the said, ‘special law’ in so far as they are not repugnant to the Code. A bare perusal of the aforesaid provisions leads to only logical interpretation that by enacting the provisions of MMDR Act, the provisions of Indian Penal Code are expressly

excluded. Section 22 of the MMDR Act makes it abundantly clear that no Court shall take cognizance of an offence under this Act except on a complaint made by any officer authorized in this behalf by the Central Government or the State Government, as the case may be. Section 2 (d) of Cr.P.C. defines the term ‘complaint’ as any oral or written allegation made to a Magistrate with a view to taking action under the Code. The definition as provided under Section 2 (d) of the Cr.P.C. does not include a police report, which is further defined in Section 2 (r) of Cr.P.C., which means a report forwarded by the Police Officer to a Magistrate under sub-section 2 of Section 173 Cr.P.C. The statutory scheme under the MMDR Act and the Cr.P.C. provides that the prosecution under the MMDR Act can only be launched by way of a complaint case and an FIR cannot be registered under the provisions of the MMDR Act. Therefore, the impugned FIR and all the subsequent proceedings arising therefrom are *void ab initio* and are liable to be quashed.

8. Since, the MMDR Act is a special statute and it is trite law that if a special enactment lays down the provisions regarding procedure that must be adopted for investigation and adjudication of an offence that falls in its purview, general provisions of the IPC or the Cr.P.C. will not be attracted. Reliance in this regard can be placed on the judgment of the Hon’ble Supreme Court in ***Jeewan Kumar Raut and another versus C.B.I (2009) 7 SCC 526*** and this Court in ***Ajay Kumar Sandhu vs. State of Haryana in CRM-M-29708-2014***. A Three Judge Bench of the Hon’ble Supreme Court in ***Delhi Administration Vs. Ram Singh AIR 1962 SC 63*** has held that when the power to investigate has been exclusively bestowed upon a special person/body then only the authorized person can conduct investigation. Speaking through Justice Raghubar Dayal, the following has been held:

“22. *If the power of the special police officer to deal with the*

offences under the Act, and therefore to investigate into the offences, be not held exclusive, there can be then two investigations carried on by two different agencies, one by the special police officer and the other by the ordinary police. It is easy to imagine the difficulties which such duplication of proceedings can lead to. There is nothing in the Act to coordinate the activities of the regular police with respect to cognizable offences under the Act and those of the special police officer.

23. The special police officer is a police officer and is always of the rank higher than a Sub-Inspector and therefore, in view of Section 551 of the Code, can exercise the same powers throughout the local area to which he is appointed as may be exercised by the officer in charge of a police station within the limits of his station.

24. We are therefore of opinion that the special police officer is competent to investigate and that he and his assistant police officers are the only persons competent to investigate offences under the Act and that police officers not specially appointed as special police officers cannot investigate the offences under the Act even though they are cognizable offences. The result is that this appeal by the Delhi Administration fails and is hereby dismissed.”

9. Similarly, the Hon’ble Supreme Court in **Union of India vs. Ashok Kumar Sharma and others 2021 CriLJ 2006** has categorically held that under a special statute like Drugs and Cosmetics Act, 1940, as per the provisions of Section 32 of the said Act read with the scheme of the Cr.P.C., a police officer cannot prosecute an offender in regard to such offence even if they are cognizable offences and the persons authorized under Section 32 of the Act are entitled to do the same. As such, the very registration of the FIR (supra) is bad in the eyes of law, as cognizance of an offence under the MMDR Act can only be taken upon a criminal complaint.

10. This Court is of the view that the very registration of FIR (supra) is bad in the eyes of law as per the statutory provisions of the MMDR Act. Cognizance of an offence under the said Act can only be taken up on a criminal

complaint filed by the officer authorized under the MMDR Act in this regard.

In view of the above discussion, this Court is of the considered opinion that the police has no power either to investigate, prosecute or deal with any offence either under the MMDR Act.

11. In view of the discussion above, the present petition is allowed and FIR No.178 dated 25.10.2017 registered under Section 21(1) Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter ‘MMDR Act’) at Police Station Ajnala, District Amritsar (Rural) and all subsequent proceedings arising therefrom are hereby quashed. Hence, the present petition is disposed of accordingly.

12. Pending miscellaneous application(s), if any, also stand disposed of.

March 15, 2024

manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No