

Form No. J(2)

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

**PRESENT:
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

CRR 2408 of 2022

**BIRENDRA NATH KAPRI @ BIREN CHANDRA KAPRI
@ BIREN CHANDRA KAPDI
VS.
THE STATE OF WEST BENGAL**

For the petitioner : Mr. Amarta Ghose,Adv.

Mr. Souryadeep Ghos,Adv.

For the State : Mr. Debasish Roy,Adv.

Ms. Amita Gour,Adv.

Mr. Anindya Sundar Chatterjee,Adv.

Heard On : 16.12.2025

Judgment On : 16.12.2025

Delivered On : 23.12.2025

CHAITALI CHATTERJEE (DAS) J:

1. The petitioner has come up before this Court with a prayer to quash the proceeding pending before the learned Court of Additional Chief Judicial Magistrate at Paschim Medinipur in connection with G.R. Case No. 1344 of 2022 under Sections 379/411/413/414 of the Indian Penal Code and

Sections 21(4)/21(5) of Mines and Minerals (Development Regulations) Act, 1957.

Brief fact of the case

2. The petitioner was selected as successful bidder for the sand block no. MSB-11 in the competitive Bidding held on 24/10/2016 for granting of mining lease for sand minerals in Mouza- Ghaneswarpur, J.L. No. 109, P.S.- Midnapur covering an area of 12.35 acres. The lease has applied to the Government of West Bengal for mining lease for sand and the said lease was valid for a term of five years.
3. It is further case of the petitioner that was carrying out excavation in accordance with the terms of the lease but the police authorities Ganguripal Police Station regularly harassed the petitioner and his team worker for want of illegal gratification and as the present petitioner and other sand block holders did not provide the same also faced with regular harassment and obstruction in the sand excavation work by the local police authorities. A mass petition was submitted before the Additional District Magistrate and District Land and Land Reforms Officer complaining about such atrocities of the police authorities . On March 22, 2022.
4. This is further case of the petitioner that as an act of grudge against the petitioner police authority initiated suo-moto complaint against petitioner by virtue of a written complaint by ASI of the said police station namely Paban Kumar Kour which was registered for investigation before the said

police station as Gurgauripal Police Station Case No. 82/2022 dated 01.05.2022 under the above mentioned sections. The allegations levelled against the present petitioner was firstly on 2022 received information over telephone the duty officer Gurgauripal Police Station to the effect that poclain machine/JCB machine was excavating sand from the middle of the Kansabati river through extralegal means at MSB -11, Ghanashyampur mouza under Ganguripal Police Station and the matter was informed to the Officer-in-charge and pursuant to the incident he along with the force went to the spot and enquired the matter and found the machine running away from there at fast speed from the said sand mining block and the complainant along with force tried stop the machine but in vain. He also found lease holder excavating sand out of his demarcated site by using machine which was also disrupted decrease the navigability of the river as well as rate of locality as most of the local people earned their livelihood by working at sand mines.

5. The petitioner has therefore come up before this Court for quashing of the said proceeding pending before the Court of learned Magistrate.

Submissions

6. Learned Advocate appearing on behalf of the petitioner submits petitioner is a bona fide lease holder for sand mining of area mentioned in the agreement which was valid for five years. The petitioner could not fulfil the demand of the local police authorities and which by way of a letter he along with the other persons informed to the authorities out of grudge

this petition of complaint has been lodged falsely accusing him for doing sand mining illegally has been mentioned on 1st May, 2022 when the letter was given in the month of March , 2022.

7. It is further submitted that the allegations as levelled against the present petitioner is not maintainable on the face of the complaint as it was mentioned therein that the police hot chased that proclaim machine/ JCB machine and could not stop the same as the said machine moved so fast but it is apparently improbable considering that the said JCB machine could not move so fast as no wheel and is having a cater pillar chain so therefore the allegation is improbable and in terms of the decision cited in the ***State of Haryana Vs. Bhajanlal***¹ whereas it is specifically mentioned that in case where the allegation found are so improbable on the face of it the High Court must exercise power under Section 482 to quash the F.I.R/ proceeding.

8. The other points raised by the learned advocate of the petitioner that complaint itself is also not maintainable in terms of Section 25 Mines and Minerals. The complaint has lodged by the police authority when the competent authority is mentioned in the said Act is a different person.

9. State has raised objection and submits on receiving the information police authority went there and found that the petitioner excavating from the middle of the river disturbing the ecological balance and used machine

¹ 1992 Supp (1) SCC 335

10. and therefore the complaint was lodged. Hence, at this stage since investigation is still going on it should not be quashed at the threshold.

Analysis

11. Heard the submission of both the Learned Aadvocates. At the outset, it can be seen that while passing the order by the Coordinate Bench of this Court on 9th December, 2022 directed the Executive Engineer, Irrigation Department, Government of West Bengal to submit a report apprising as to whether excavation of sand from the disputed lot should be made by mechanical process or not. Secondly when the petitioner excavating sand outside the lease hold property. The said inspection report submitted to the Court along with the Case Diary in terms of the same a report was submitted before this Court during pendency of the proceeding.

12. On perusal of such inspection report as filed by the Officer-in-charge Gurguripal Police Station it can be seen that during inspection it was observed that there are series of consecutive lease sand blocks existing side by side at the said location of river bed and part of the said location of river bed was under water of Kansabati, therefore demarcation could not be done by the authorities for the concerned sand block. It is further mentioned in the report that manual method of mining is preferred over mechanized process. Furthermore manual excavation of mining help the local police as a source of wage earning. However considering the location of the total surrounding portion of the sand blocks from the river bed semi mechanized or mechanized process of sand

mining from the top surface of river bed may be allowed if permissible depth of sand extraction is more than one meter, in consulting with the District Administration.

13. On perusal of the Case Diary prima facie it can be found that there was an agreement between the present petitioner as well as the Government whereby permission was granted to the present petitioner to excavate the sand in respect of the area which was specified in the said agreement with certain norms to be maintained by both the parties. It further transpires that during subsisting of the said agreement application was lodged by the present petitioner to the District Magistrate, Purba Medinipur, Additional District Magistrate and District Land and Land Reforms Officer, Sub-divisional Land and Land Reforms Officer, Block Land and Land Reforms Officer and also Chairman and the Managing Director alleging creating pressure by the local police authorities regarding excavation and sand also demanding illegal gratification.

14. The instant complaint has been filed on 1st May, 2022 and as drawn attention of this Court by the learned advocate of the petitioner that is place of occurrence under serial no.5 in the FIR, nothing was mentioned and it is blank. However, in the serial no. 5 Sub-clause 9b) the address is shown at the middle of Kansabati river under the said mouza. Pursuant to the submission of the learned advocate since complainant could not ascertain the location as to exactly where excavating was going on they left place of occurrence as blank.

15. Pursuant to the report furnished before this Court also the area of the block in respect of which lease was granted to number of persons for excavating sand in the river bed no specific demarcation could be done by the authority as most part was submerged under water . Therefore it cannot be ascertained from the content of the complainant or the allegation made by the complainant coupled with the report that when the petitioner was excavating land sand outside the area allotted to him by virtue of lease agreement or not . No such allegation can be found that after expiry of lease deed he is continuing excavating the sand from the area earmarked for the petitioner for excavating land by virtue of the agreement. Section 22 of the (Mines and Minerals Development and Regulation), Act, 1977 clearly States :-

“No Court shall take cognizance of any offence punishable under this Act or any rules made therein except upon complaint in writing made by a person authorized in this behalf by the Central Government or the State Government.”

In section 2 of the west Bengal Minor Mineral Conce from time to time under the Rules. Rules 2016 the Authorised officer means any officer who has been authorized by the State Government to perform duties.

It is contended that ASI o Police is not authorized by the State Government to lodge complaint against the petitioner and FIR drawn on the said complaint is illegal, inoperative and not enforceable”.

16. Therefore since the complaint was lodged by the ASI of police who was in not the competent person to lodge such complaint ,the complaint itself is maintainable on the face of it .

17. Thirdly, the allegation regarding chasing JCB Machine because of the speed said machine as described for which it could not be stopped appears to be improbable, considering the functioning of such machine it's size and the sloth movement and the speed usually followed by from about the lease and or its validity or verified the extent of the area under lease the said machine. Complainant though mentioned that the petitioner was excavating the sand nothing was seized and no allegation that the petitioner on seeing them fled away . No attempt was made to enquire that the lease agreement was still in force or not.

18. So in summation of supra the police could not seize the JCB as it moved so fast and though found the petitioner excavating sand illegally did not take any steps for violation of the provisions of law .

19. In the case of celebrated decision of ***State of Haryana Vs. Bhajanlal (Supra)*** the parameters were framed by the Hon'ble Apex Court so far as the power of High Court to quash the FIR/complaint are as follows :

“8.1. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have

given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis

of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Conclusion

20. In this case hence on the touchstone of the above parameters this Court is of the view that the allegations are inherently improbable and if taken on face value do not constitute an offence to attract 21(4)/21(5) of the Mines and Minerals Act or any ingredients of theft to attract section 379 or the connected sections has neither any case made out that is a habitual offender and /or that he was habitually dealing in stealing property and there is no concealment of stolen property. No seizure in terms of the provision and whether the sand was excavated outside the allotted sand block or without any lawful authority was never ascertained.

21. In view of the above the F.I.R / proceeding stands quashed. However, it could not preclude the investigating authority to proceed to take appropriate steps in case any such complaint is found regarding illegal excavation of sand by the petitioner in future.

22. Hence this revisional application stands allowed. The F.I.R/Proceeding pending before the Learned Magistrate is hereby quashed.

23. Urgent Photostat certified copy of this judgement, if applied for, be supplied to the parties upon compliance of all legal formalities.

(Chaitali Chatterjee (Das) J.)

Sg.



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Calcutta