





30.04.2018 identifying the petitioners as the persons who have made the alleged theft.

3. Learned counsel for the petitioners *inter alia* contends that the FIR (*supra*) has been filed as a counter blast to the writ petition bearing No. CWP-14934-2018 filed by the petitioners against the BDPO, Block Chugawana, the DDPO, Amritsar, Gram Panchayat Chawinda Kalan and SHO, Police Station Lopoke, challenging the notices whereby the petitioners were directed to deposit a sum of Rs.52,30,900/- for the alleged excavation of sand. In the said matter, as per the order dated 14.02.2019 (Annexure P-5) passed by this Court, the notices dated 25.01.2018, 11.05.2018 and order dated 03.05.2018 were withdrawn by the BDPO. Further, the FIR (*supra*) has been registered without following the due procedure and obtaining a sanction from the concerned authority. In fact, no specific allegations have been levelled against the petitioners and no role has been attributed to them. The *mala fide* intention behind registration of FIR(*supra*) is also illustrated by the fact that petitioner No.5 was working in Bangalore for the last two and a half years.

4. *Per contra* learned State counsel submits that inspections were conducted and sand worth Rs.52,30,900/- was found to be stolen from the pond falling under the limits of Gram Panchayat Chawinda Kala. The panchayat has duly passed a resolution identifying the petitioners as the culprits. As such, intervention of this Court in the present matter is not warranted.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioners were previously asked to deposit Rs.52,30,900/- with the Gram Panchayat vide letter dated 03.05.2018 (Annexure P-3) citing that the Gram Panchayat has



passed a resolution identifying them as the culprits who have committed theft of sand. However, the following order was passed by this Court on 14.02.2019 in the writ petition filed by the petitioners bearing no. CWP-14934-2018:

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The primary argument raised by the counsel for the petitioners is that without any proper inquiry or following the principles of natural justice, as also without any authority or sanction under any statutory provision, the impugned notices and action for recovery has been initiated and passed.

Upon notice to official respondent Nos.1 to 3, reply has been filed wherein it is stated that for the alleged excavation, even FIR No.141 dated 21.7.2018, under Section 379 IPC for committing theft as also under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, stands lodged at Police Station, Lapoke, District Amritsar Rural.

In the reply, there is no mention of any statutory provision whereby such a recovery without resorting to any adjudication process could be ordered.

In view of aforesaid lack of clarification, the BDPO concerned, was summoned to appear before this Court. At the time of resumed hearing today, Mr. Gurmeet Singh, BDPO concerned, has come present in the Court. He concedes that there is no mention of any statutory provision under which such an action or notice has been issued. In fact, he is unable to even refer to any such statutory provision

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6. As such, it appears that the entire proceeding initiated by the concerned authorities do not abide by the procedure laid down by the MMDR Act. It must be noted that 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. (now BNS and BNSS, respectively) 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***



vs. 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.”

7. Further, the arraignment of the petitioners as accused is solely based on the resolution dated 30.04.2018 passed by Gram Panchayat Chawinda Kalan. Moreover, it is not clear as to how the Gram Panchayat has concluded that it was in fact the petitioners who have illegally excavated sand from the village pond. A perusal of the FIR (supra) would indicate that no specific role has been attributed to the petitioners either, indicating this complicity. As



discussed above, the notices directing the petitioners to deposit the worth of the missing sand i.e. Rs.52,30,900/- were set aside by this Court vide order dated 14.02.2019 (Annexure P-5) in CWP-14934-2018.

8. Further still, a complaint was previously made in the year 2012 at the behest of the Sarpanch namely Piarjit Kaur, but only against petitioners No.1 and 2. However, written submissions were made before DDPO, Amritsar and DSP (Rural), Amritsar wherein it was stated that it was Piarjit Kaur and some other persons who had excavated sand from the said location. Curiously, no further inquiry was made in that context. Yet, after a lapse of about 6 years, an identical issue was raised by Sawinder Singh, current Sarpanch and Jagbeer Singh, Panchayat Secretary against the petitioners, which begs the inference of involvement of a malicious intent.

9. In view of the discussion above, this Court is of the considered opinion that interest of justice will be served if the present petition is allowed. Accordingly, FIR No. 141 dated 21.07.2018 registered under Section 21(1) Mines and Minerals (Development and Regulation) Act, 1957 and Section 379 of the Indian Penal Code, at Police Station Lopoke, District Amritsar (Rural) and all subsequent proceedings arising therefrom are hereby quashed qua the petitioners.

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

(HARPREET SINGH BRAR)
JUDGE

29.01.2025
Neha

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