

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-11102-2025 (O&M)

Date of Decision: 28.02.2025

Zorawar Singh

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Rishav Jain, Advocate and
Mr. Kanish Jindal, Advocate for the petitioner

Sandeep Moudgil, J. (Oral)

(1). This petition under Section 528 BNSS has been filed by the petitioners with a prayer to quash the FIR No.14 dated 21.01.2022 under Section 379 IPC and Section 21 of Mines and Minerals (Development and Regulation) Act, 1957.

(2). Learned counsel for the petitioner contends that the petitioner was not caught at the spot as he was not driving the tractor and has been named in the FIR since the said tractor was registered in the name of the petitioner and a perusal of the FIR itself would show that the police did not witness any illegal mining at the spot.

(3). It is vehemently argued that Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957 (in short, 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 criminal proceedings initiated are nothing but an abuse of process of law inasmuch as Section 41 IPC read with Section 4(2) CrPC 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 and since the provisions of IPC are expressly excluded, the prosecution under the MMDR Act can only be launched by way of a complaint and not by way of an FIR as has been wrongly done in the present case. Reliance has been placed on Kulwant Kaur vs. State of Punjab & Anr. CRM-M-49618-2017 decided on 15.03.2024.

(4). Heard learned counsel for the petitioner.

(5). The moot point for consideration arise before this Court as to the legality of the FIR in cases involving theft and illegal mining in view of express bar provided under Section 22 of the MMDR Act, in terms whereof, the provisions of Indian Penal Code are expressly excluded?

(6). Before proceeding further it would be appropriate to take note of Section 22 of the MMDR Act, 1952, which is quoted 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.”

(7). The Apex Court in State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 dwelled upon the broader aspect and took recourse to Articles 48-A and 51-A of the Constitution of India which obligates all concerned, including the Central and the State Governments, to conserve, protect and not waste such valuable resources and improve the environment and safeguard the forests and wild life of the country and on a comparative reading of Section 22-A of MMDR vis-à-vis the constitutional mandate, the Supreme

Court authoritatively held that the provision under the MMDR is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed.

The relevant portion of the said report reads as under:-

72. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190 (1)(d) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Indian Penal Code, we are of the definite opinion that the ingredients 4 of 10 constituting the offence under the MMDR Act and the ingredients of dishonestly

removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., 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 authorized officer for taking cognizance in respect of violation of various provisions of the MMRD Act. Consequently the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled. Consequently, these criminal appeals are disposed of with a direction to the concerned Magistrates to proceed accordingly.”

(Emphasis Supplied)

(8). Similar view was reiterated by the Supreme Court in **Jayant Vs. State of Madhya Pradesh, (2021) 2 SCC 670** wherein it was held that the offences under the MMDR Act or any rule made thereunder and the offences under the IPC are different and distinct offences and as such 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. The Supreme Court framed the guiding factors and future course adoptable in cases where the provisions of IPC have been invoked sans MMDR. The conclusion drawn in **Jayant’s** case (supra) are reproduced as under:-

“...21.1. that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned In charge/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;

21.2. 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;

21.3 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

21.4 that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned Incharge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned In charge 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.

21.5. in a case where the violator is permitted to compound the offences on payment of penalty as per subsection 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 sub section 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further."

(Emphasis Supplied)

(9). In sum and substance, the validity of an FIR in a mining case depends on whether the alleged offence is made out under the IPC as well as MMDR Act as the same contains specific provisions (notably Sections 21 and 22) regulating mining offences and prescribes that certain offences under this Act can only be prosecuted on the basis of a complaint filed by an authorized officer. Section 22 of the MMDR Act bars police from registering an FIR for offences under the MMDR Act unless directed by a magistrate on a complaint from an authorized officer. However, offences under Section 379 & 411 IPC involving theft etc., which may arise from illegal mining activities, are distinct and separate from offences under the MMDR Act and as such, the bar under Section 22 of the MMDR Act does not apply to offences under the IPC. Therefore, an FIR can be validly registered by the police if the offence is made out under the IPC, even if it relates to illegal mining.

(10). The reliance put on Kulwant Kaur's case is distinguishable on facts, and its application is therefore not warranted in the present case. The *ratio decidendi* of a judgment is binding only to the extent that the facts and legal issues are similar. Given the differing factual matrix, this Court is not bound to follow the earlier decision and reserves itself from commenting on its ubiquitous applicability in like matters inasmuch as the principle of *stare decisis* requires the courts to follow the prevailing and declared precedents.

(11). It can thus safely be inferred that the offenses under the IPC, such as theft or receiving stolen property, stemming from illegal mining activities and broadly falling within the four corners of constitutional mandate as provided under Article 48-A & 51-A of our Constitution, are separate from MMDR Act offenses and as such, the restriction enveloped under Section 22 of the MMDR Act does not apply, and an FIR can be registered for IPC offenses, even if connected to illegal mining.

(12). In view of the above discussion, there is no merit in the present petition and the same is accordingly dismissed.

(13). Anything stated hereinabove, shall have no bearing on the merits of the case before the trial court.

28.02.2025
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No