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

**CRM-M No.7423 of 2024
Reserved on: 11.02.2026
Pronounced on: 02.04.2026
Uploaded on: 02.04.2026**

Shiv Kumar Sarpanch

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Gurinder Singh Dhot, Advocate
for the petitioner.

Ms. Ramta Chowdhary, DAG, Punjab.

None for respondent No.2.

RAJESH BHARDWAJ, J.

1. Present petition has been filed praying for the quashing of FIR No.105, dated 01.07.2022, under Sections 21(1) & 4(1) of Mines & Minerals (Development & Regulation) Act, 1957 (Section 379 IPC added later on), registered at Police Station Lalru, District SAS Nagar including the police report (challan) filed under Section 173 Cr.P.C. along with all consequent proceedings arising therefrom. Further prayer has been made for staying the further proceedings before the learned trial Court during the pendency of the present petition.



2. Succinctly, the facts of the case are that FIR in the present case was got registered on the statement of complainant, namely, Satpal Singh for stopping the illegal mining in village Bhagwasi and for taking action against the accused. It was alleged that mining was conducted in last few days and the same was got done by the present Sarpanch of village Shiv Kumar in Khasra No.750, which was the common land of village and the same was being done without any permission, which was the violation of the Mining rules. Thus, the request was made to take legal action against the accused. On the basis of the same, the FIR was registered. On registration of the FIR, the investigation commenced. On completion of the investigation, the challan was presented under Section 173 Cr.P.C. and the petitioner was prosecuted under Sections 21(1), 4(1) of Mines & Minerals Act, 1957 and Section 379 IPC. On framing of charges, the trial commenced. After registration of the FIR, the petitioner was granted the concession of anticipatory bail by this Hon'ble Court vide order dated 23.03.2023 passed in CRM-M-31155-2022. Hence, the petitioner is before this Court praying for quashing of the above said FIR along with the challan filed under Section 173 Cr.P.C.

3. Learned counsel for the petitioner has vehemently submitted that the petitioner has been falsely and frivolously implicated in the present case. He has submitted that the present FIR was registered against the petitioner at the instance of respondent No.2 and after completion of the investigation, the challan was presented before the learned trial Court on 26.10.2023. He has further submitted that on perusal of the FIR and



police report, no offences under Section 21(1) of Mines & Minerals (Development & Regulation) Act, 1957 (for short 'the Act') and Section 379 IPC are made out. He has submitted that the petitioner has no concern with the khasra No.750, in which the illegal mining had taken place and the same is under the illegal possession of some other persons of village Bhagwasi. He has further submitted that the petitioner is the Sarpanch of the village and he has performed his duties honestly. He has submitted that some persons of village are in illegal possession of the Panchayat land and the petitioner, being the Sarpanch, had initiated the legal action against them, which resulted in enmity and thus, in lieu of the same, the present FIR has been registered against the petitioner with intention to remove him from the post of Sarpanch in order to retain their illegal possession of the Panchayat land. He has submitted that the complainant-respondent No.2 is also in the illegal possession of the common land in Khasra No.326(5-10), 327(4-0) and 383(1-3) and the petitioner had initiated the process to remove the complainant's encroachment on the abovesaid land and passed a resolution in this regard on 11.06.2022. He has submitted that the petitioner has already approached before the Collector (Panchayat Lands), SAS Nagar and he got issued the possession warrants of the Gram Panchayat land against the persons, namely, Kulwinder, Sushil Kumar, Harichand and Naresh Kumar, who were cited as witnesses against the petitioner in the police challan. He has submitted that after registration of the FIR, the petitioner was suspended by the Director, Rural Development and Panchayat vide



order dated 29.05.2023 against which the petitioner has earlier filed CWP No.26755 of 2023 before this Hon'ble Court and this Hon'ble Court had stayed the order dated 29.05.2023 vide order dated 30.11.2023. He has further submitted that after the suspension of the petitioner, the Government appointed the Administrator of the village, who passed a resolution dated 25.11.2023 regarding 17 warrants of possession received by the village Panchayat, which shows that the Khasra No.750 is in the possession of other persons including the witnesses of the present case. He has submitted that the investigating agency could not collect any evidence to connect the petitioner with the alleged crime, however the challan has been presented before the learned trial Court with intention to harass the petitioner at the instance of persons, who are in illegal possession of the Panchayat land. He has submitted that the petitioner has already granted the concession of anticipatory bail by this Hon'ble Court vide order dated 23.03.2023 passed in CRM-M-31155-2022. To buttress his arguments, learned counsel for the petitioner has relied upon the decision passed by Hon'ble the Supreme Court in '*State of Haryana vs. Bhajan Lal*', AIR 1992 SC 604. He has further relied upon the decisions passed by by this Hon'ble Court in '*Sukhdev Singh vs. State of Punjab*', CRM-M-36469-2019, decided on 13.06.2024; '*Karampal and another vs. State of Haryana*', 2014(2) Crimes 607 and '*Jagjit Singh vs. State of Punjab*', CRM-M-19534-2014, decided on 10.11.2014 and has submitted that cognizance of offence punishable under Section 21 of Mines & Minerals (Development & Regulation) Act, 1957 can be taken only on a



complaint in writing to be filed by the authorized person and that FIR cannot be recorded in respect of an offence punishable under Section 21 of the said Act and as such, the present case is squarely covered by the said decisions. He has further submitted that the present FIR, being nothing but an abuse of the process of the Court, deserves to be quashed.

4. *Per contra*, learned counsel for the State has opposed the submissions made by learned counsel for the petitioner. She has submitted that the petitioner was found doing the mining of earth without any licence or permit and committed an offence under Section 4(1) and is rightly punishable under Section 21(1) of Mining & Minerals (Development & Regulation) Act, 1957. She has further submitted that in the facts and circumstances, no ground for quashing of the FIR is made out and thus, the present petition deserves to be dismissed.

5. The Court has heard learned counsel for the parties and perused the record with their able assistance.

6. On the analysis of the arguments advanced and the record perused, it has been transpired that the present FIR has been lodged on the statement of complainant-respondent No.2, namely, Satpal Singh for stopping the illegal mining in village Bhagwasi. The allegations made against the petitioner in the FIR are that the petitioner, who was the Sarpanch of the village, was doing illegal mining in the common land of the village without any permission. The petitioner has already been granted the concession of anticipatory bail by this Hon'ble Court vide order dated 23.03.2023 passed in CRM-M-31155-2022. After completion



of the investigation, the challan was presented before the learned trial Court on 26.10.2023. As submitted before this Court by learned counsel for the petitioner, the illegal mining was got done by some other persons of village Bhagwasi and they are also in illegal possession of the Panchayat land. Suspension order of the petitioner was also stayed by this Court vide order dated 30.11.2023 passed in CWP-26755-2023.

7. For consideration, Sections 21 & 22 of Mines and Minerals (Development & Regulation) Act is equally relevant, which is as under:

‘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 sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised 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.*

22. Cognizance of offence: *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.'*



8. A bare perusal of Section 22 of the Mines and Minerals Act would show that no Court shall take cognizance of any offence punishable under Section 21 of the Act except upon complaint in writing made by a person authorized in this behalf by central government or State government. Hon'ble the Supreme Court and this Court has time and again held that if complaint as mentioned in terms of Section 22 of the Act is not made, then the cognizance is bad and contrary to the law.

9. Hon'ble the Supreme Court in '**Kanwar Pal Singh vs. State of Uttar Pradesh and another**', 2020(1) RCR (Criminal) 545, has held as under:

“11. We would again advert to the decision in Sanjay (supra) which had overruled the decision of the Calcutta High Court in Seema Sarkar v. State wherein the High Court held the proceedings to be invalid and illegal as the Magistrate had taken cognizance on the basis of a charge-sheet submitted by the police under Section 21(2) of the Mines Regulation Act and Section 379 of the IPC, observing that the cognizance was one that cannot be split or divided. The High Court had further observed that as the complaint was not made in terms of Section 22 of the Mines Regulation Act, the cognizance was bad and contrary to law. We have already noted the decision of the Delhi High Court which had directed that the FIR should not be treated as registered under Section 379 of the IPC but only under Section 21 of the Mines Regulation Act. These decisions of the Calcutta High Court and the Delhi High Court were reversed and set aside by this Court in Sanjay (supra) after referring to Section 26 of the General



Clauses Act and the meaning of the expression 'same offence', to observe that the offence under Section 21 read with Section 4 of the Mines Regulation Act and Section 379 of the IPC are different and distinct. The aforesaid reasoning compels us to reject the contention of the appellant that the action as impugned in the FIR is a mere violation of Section 4 which is an offence cognizable only under Section 21 of the Mines Regulation Act and not under any other law. There is no bar on the Court from taking cognizance of the offence under Section 379 of the IPC. We would also observe that the violation of Section 4 being a cognizable offence, the police could have always investigated the same, there being no bar under the Mines Regulation Act, unlike Section 13(3)(iv) of the TOHO Act.

- 12. In view of the aforesaid discussion, we would uphold the order of the High Court refusing to set aside the prosecution and cognizance of the offence taken by the learned Magistrate under Section 379 of the IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. We would, however, clarify that prosecution and cognizance under Section 21 read with Section 4 of the Mines Regulation Act will not be valid and justified in the absence of the authorisation. Further, our observations in deciding and answering the legal issue before us should not be treated as findings on the factual allegations made in the complaint. The trial court would independently apply its mind to the factual allegations and decide the charge in accordance with law. In light of the aforesaid observations, the appeal is partly allowed, as we have upheld the prosecution and cognizance of the offence under Section 379 of the IPC and Sections 3 and 4 of the*



Prevention of Damage to Public Property Act. There would be no order as to costs.”

10. A similar view has been taken up time and again by this Court in ‘**Jagjit Singh vs. State of Punjab**’, 2014(30) RCR (Criminal) 562, which held as under:

“9. A perusal of Section 22 of the Act brings out that an offence punishable under Section 21 of the Act is a non-cognizable offence. To put it otherwise cognizance of an offence punishable under Section 21 of the Act can be taken only on complaint in writing to be filed by the authorised person. To clarify further, an F.I.R cannot be recorded in respect of an offence punishable under Section 21 of the Act. In **Harmela Ram Versus State of Haryana (supra)**, a similar situation arose and this Court quashed the FIR and proceedings arising therefrom by observing that the offence being non-cognizable, FIR in the matter could not be recorded and continuance of the proceedings arising therefrom would be an abuse of process of law and the Court. It has been contended on behalf of the respondent-State that offence of Section 379, IPC, being a cognizable offence, FIR has been rightly recorded even though another offence which happens to be non cognizable is involved. I regret my inability to subscribe to the view put forth on behalf of the respondent-State. It is not in dispute that offence of Section 379, IPC, is a simple as offence of theft and the theft of sand or other minerals is governed by the provisions of the Act, which is a special statute. The matter being regulated by a special statute, provisions of general law have to give way to the provisions of said Act. This was so held by this Court in



M/s Mahalakshmi Spinners Ltd. Versus State of Haryana, 2007(1) R.C.R.(Civil) 381, Raman Kapila and another Versus State of Punjab 2012(4) R.C.R. (Criminal)634 and Rakesh Kumar Versus State of Haryana 2011(3) R.C.R(Criminal) 629. Nothing to the contrary has been shown during the course of hearing.

10. *That being so, the offences of Section 379, IPC, could not be included in the First Information Report and allowing the proceedings under that provision, would, in disputably amount to an abuse to the process of law and the Court and shall be vexations.*
11. *The consequence that follows is that the only offence that could be said to have been committed by the petitioners under falls Section 21 of the Act which would be a non-cognizable offence in terms of Section 22 of the Act and, as such, the FIR recorded in the matter deserves to be quashed.*
12. *In the consequence, I accept the petition and quash the F.I.R No.9 dated 17.02.2013 recorded under Section 379, IPC, and Section 21 of Mines and Minerals (Regulation & Development) Act, 1957, (Annexure P1) with all the proceedings emanating therefrom.”*

11. A bare perusal of statutory provision of the 528 of B.N.S.S. would show that the High Court may make such orders, as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

12. The Hon'ble Supreme Court in a number of cases including *Narinder Singh and others Versus State of Punjab and another, 2014 (6) SCC 466; B.S.Joshi and others vs State of Haryana and another*



(2003) 4 Supreme Court Cases 675 followed by this Court in Full Bench case of **Kulwinder Singh and others Vs. State of Punjab and another, 2007(3) RCR 1052** have dealt with the proposition involved in the present case and settled the law.

13. Thereafter, Hon'ble Supreme Court in **Gian Singh vs State of Punjab and another (2012) 10 Supreme Court Cases 303** further dealt with the issue and the earlier law settled by the Supreme Court for quashing of the FIR in **State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335**. Para 61 of the judgment reads as under:-

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of



Corruption Act or the offences committed by public servants while working in that capacity, etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

14. In the considered opinion of this Court the prosecution of the petitioners is nothing but an abuse of the process of Court. As a result, this Court finds that the case in hand squarely falls within the ambit and parameters settled by judicial precedents and hence, FIR No.105, dated 01.07.2022, under Sections 21(1) & 4(1) of Mines & Minerals

(Development & Regulation) Act, 1957 (Section 379 IPC added later on), registered at Police Station Lalru, District SAS Nagar including the police report (challan) filed under Section 173 Cr.P.C. along with all consequent proceedings arising therefrom are hereby quashed qua the petitioner.

15. Petition stands allowed.

02.04.2026		(RAJESH BHARDWAJ)
<i>rittu</i>		JUDGE
	Whether speaking/reasoned :	Yes/No
	Whether reportable :	Yes/No